Building Societies sourcebook
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Chapter 1

Introduction
1.1 Application and overview

Application

The Building Societies sourcebook (BSOCS) applies to all building societies.

Purpose

This chapter describes the key financial and lending risks to which societies are exposed and sets out the framework within which the PRA will supervise the treasury activities of societies. It includes details of the five treasury "approach" categories ("Administered", "Matched", "Extended", "Comprehensive" and "Trading") applied, as well as details of the three approaches to lending activities ("Traditional", "Limited" and "Mitigated"). The chapter emphasises the respective responsibilities of boards and management for monitoring and controlling financial risks and lending.

Other applicable provisions

Societies should note that they must also comply with the applicable prudential rules in GENPRU and BIPRU. Societies should refer to GENPRU and BIPRU for full details of these rules.

Unless otherwise stated, references in this sourcebook to "society" (except those that relate to BIPRU 12) are to "society" groups, consolidated to include all subsidiary undertakings. For the avoidance of doubt, any undertakings in the society’s group that are subject to the requirements of BIPRU 12 must comply with those requirements on a solo basis.
1.2 Supervisory standards for treasury activities

Setting risk limits

Under section 5 of the 1986 Act, a society’s principal purpose is that of making loans which are secured on residential property and are funded substantially by its members, not undertaking, and trading in, financial risk for profit. Societies should therefore adopt a risk-averse approach to maturity mismatch and to structural risk management. A degree of maturity mismatch and structural risk is inherent in normal society operations, but boards of societies ("boards") should set risk limits which either:

1. ensure that, as far as possible, exposures to changes in interest rates are minimised; or
2. where interest rate positions are to be taken, restrict potential reductions in income or economic value, estimated under robust stress testing scenarios, to levels which would not compromise the current or future viability of their societies.

Societies should aim to eliminate, as far as is practicable, all exposures to risk arising from movements in currency exchange rates.

1.2.1 PRA

(1) As explained in BSOCS 5.2.1 G, a society’s system for financial risk management should be adequate. The policy statement envisaged in BSOCS 5.2.4 G should be appropriate for the society’s business needs and the complexity of its existing and proposed treasury activities.

(2) The PRA has devised five models for financial risk management and treasury operations, described as supervisory treasury approaches, of increasing sophistication, to assist societies. The approaches are described as “Administered”, “Matched”, “Extended”, “Comprehensive” and “Trading”. A society that conducts its treasury activities in accordance with the most suitable (for it) of these five models, can readily demonstrate that it complies with the requirements of SYSC 4.1.1 R, SYSC 7.1.2 R and SYSC 7.1.4 R in the context of financial risk management. But these models are neither mandatory nor exhaustive. Guidance on the characteristics of each approach is set out in BSOCS 1.5.
1.3 Supervisory standards for managing risks in the lending book

1.3.1 Under section 6 of the 1986 Act, societies are required to ensure that a minimum of 75% of their commercial assets is fully secured on residential property. Since residential lending will always be such a significant part of a society’s business, it is essential that the risks arising from further concentrations within the total lending book are properly managed and mitigated to align with the board’s risk appetite.

1.3.2 Accordingly, societies should adopt formal, board-approved lending policy statements that include limits on the type of lending that will be undertaken (both as a proportion of periodic flows and of stocks), as well as setting out the key underwriting policies and controls. As with financial risk limits, boards should aim to:

   (1) ensure that, as far as possible, credit risks arising from lending are aligned with management risk appetite through careful underwriting; and

   (2) ensure that any additional risk taken is appropriately priced and managed so that loss levels under stressed conditions would not compromise the current or future viability of their societies.

1.3.3 The policy statement envisaged in §BSOCS 1.3.2 G should be appropriate for the society’s business needs and the complexity of its existing and proposed lending activities. The PRA has devised three models for lending book management, described as supervisory lending approaches, of increasing sophistication, to assist societies. The approaches are described as "Traditional", "Limited" and "Mitigated". A society that conducts its lending activities in accordance with the most suitable (for it) of these three models can readily demonstrate that it complies with the requirements of §SYSC 4.1.1 R and §SYSC 7.1.2 R, in the context of loan book management. But these models are neither mandatory nor exhaustive. Guidance on the characteristics of each approach is set out in §BSOCS 2.
With regard to any of the five approaches to treasury risk and financial risk management, or the three approaches to managing the lending book, the PRA anticipates that societies will wish to develop further their expertise, and that a change of "approach" may be necessary. In this respect, the "approach" categories should be seen, not as discrete compartments, but rather as stages in the continuous evolution of risk management and systems, with a change of "approach" marking a milestone in that progress. Societies should develop their risk management and systems to the level appropriate to support the scale and nature of their business and the PRA will be encouraging societies to enhance these capabilities where this is considered to be necessary.

Whilst the "approach" benchmarks are not binding and are guidance only, the process of moving between approaches provides a useful opportunity for the PRA to review a society's progress, and to satisfy itself that policies, limits and systems are appropriate for the activities planned.

Any society which wishes to move between the five approaches to treasury risk and financial risk management, or the three approaches to managing the lending book, should contact the PRA at an early stage. The PRA will wish to be satisfied that the society has the requisite expertise, management information systems, accounting systems and controls before any significant change in the society's treasury activities or lending policy is implemented.
1.5 Supervisory approaches to treasury management

1.5.1 BSOCS 1.5 to 1.10 provide guidance on the five models, or supervisory approaches, to treasury management described in BSOCS 1.2.3 G. Where societies have treasury operations in subsidiary undertakings, these should adopt the same approach category as that of the parent society. An outline description of each approach is set out in BSOCS 1.6 to 1.10, and tables at the end of each of Chapters 3 to 5 summarise the key features.
1.6 "Administered" approach

1.6.1 Societies in the "Administered" approach category should have balance sheets where loan assets and funding liabilities are entirely in Sterling and predominantly (>95%) subject to administered rates. In general, it is anticipated that the "Administered" approach will tend to suit small or very small societies where balance sheet management is typically undertaken by the Chief Executive in conjunction with the board.

1.6.2 Societies in this category should not hold any treasury investments, or issue any funding instruments, which contain complex structured optionality, whether this optionality relates to interest payable or receivable, instrument term or any other variable.

1.6.3 It is likely to be appropriate for a society that falls into this category to apply for a simplified ILAS waiver.
1.7 "Matched" approach

1.7.1 Societies adopting the "Matched" approach should have balance sheets where assets and liabilities are entirely in Sterling and use hedging contracts (or internal matching of assets and liabilities with similar interest rate and maturity features) to neutralise the risk arising from loans or funding other than at administered rates, on a tranche by tranche, product by product basis.

(2) This approach is characteristic of small to medium sized societies, with limited treasury skills or resources. Typically the Chief Executive of such societies will be supported by a Finance Director or Finance Manager, and report direct to the board on treasury matters (or through an appropriate committee).

1.7.2 The policies of such societies can allow use of standard hedging products for transactions permitted by section 9A of the 1986 Act, for example:

(1) interest rate swaps; and

(2) plain vanilla over the counter ("OTC") options such as swaptions, caps, collars and floors (options purchased only);

for the purpose only of matching individual products and within the exemptions permitted by section 9A. Structural hedging of the whole balance sheet should not be permitted.

1.7.3 Risk management for such societies should be achieved internally through:

(1) matching reports (detailing individual products and the hedging instruments associated with them); and

(2) gap analysis; for gapping purposes, reserves will need to be treated as having no fixed repricing date, and gap limits should be set at the minimum level required to give flexibility in timing the hedges for individual mortgage and investment products, with some allowance for residual risks (those too small to be economic to hedge) and for holdings of fixed rate liquid assets. Basis risk should be minimised by setting cautious limits for fixed rate, bank base rate and any other market rate assets and liabilities.
Gap monitoring reports should be updated and considered by the board at least monthly. By implication, *societies* adopting this approach should not be taking an interest rate view for the purposes of determining a hedging strategy.

*Societies* in this category should not hold any treasury investments, or issue any funding instruments, which contain complex structured optionality, whether this optionality relates to interest payable or receivable, instrument term or any other variable.

It is likely to be appropriate for a *society* that falls into this category to apply for a *simplified ILAS waiver*. 
The principal difference between the "Matched" and the "Extended" approaches lies in the capability to measure and hedge structural risk across the whole balance sheet, including reserves, rather than just hedging individual transactions. The approach will thus allow a society to allocate reserves to specific repricing bands representing a considered view of the characteristics of those reserves, and/or the assets deemed to "represent" them, or to manage interest rate gaps as part of a strategy for hedging the endowment effect of interest free reserves against adverse interest rate movements. Risk analysis should also enable it to position its balance sheet to take advantage of a particular interest view.

The PRA expects that some societies on the extended approach will, subject to being able to satisfy the relevant conditions, elect to apply for a simplified ILAS waiver whilst others may choose to remain as standard ILAS BIPRU firms. For a society that is a standard ILAS BIPRU firm, the PRA will discuss with the society the maximum level of wholesale funding that the society should hold. A society that wishes to operate the simplified ILAS approach will need to satisfy the relevant conditions in BIPRU 12.6, including those relating to the minimum percentage of total liabilities accounted for by retail deposits.

A society on the extended approach can potentially fund and hold assets denominated in Sterling, Euros or US dollars, whether it is a simplified ILAS BIPRU firm or a standard ILAS BIPRU firm.

A society adopting the extended approach should:

1. adopt policies and systems to enable it to undertake the hedging of individual transactions within the context of an overall strategy for structural hedging, based on detailed analysis of its balance sheet; and

2. use the output of that analysis to enable it to position its balance sheet to take advantage of a particular interest view.

Management of interest risk for such societies will typically be controlled by the board acting through an Assets and Liabilities Committee ("ALCO") or equivalent sub-committee, which will normally be responsible for agreeing any interest rate view. Reporting to the ALCO, there will typically be a Treasurer running a small treasury department with appropriate segregation between dealing and settlement activities.
Hedging instruments available to be authorised by the board will be the same as for the "Matched" approach, with the addition of (as far as permitted by section 9A):

1. FRAs/futures; and
2. foreign exchange swaps/forward contracts/options (purchase only).

Risk management systems should be based on full balance sheet gap analysis, possibly supplemented by static simulation.

Gap limits could allow leeway for risk positions, to be controlled by sensitivity limits covering potential changes in both earnings and economic value.
1.9 "Comprehensive" approach

1.9.1 The principal differences between the "Extended" and the "Comprehensive" approaches lie in:

1. the depth and quality of the risk management systems put in place to monitor and control structural risk;
2. the frequency of analysis undertaken; and
3. the currencies in which treasury operations would be undertaken.

1.9.2 Like the extended approach societies, comprehensive approach societies will manage risk using a board/ALCO/Treasurer reporting structure, but the latter will typically subdivide the treasury department further with a separate "middle office" risk management function, segregated from "front office" (dealing) and "back office" (settlement/accounting).

1.9.3 Hedging instruments available for use under agreed board policy will include those for the extended approach plus (as far as permitted by section 9A):

1. complex interest rate swaps;
2. complex interest rate caps/collars/floors (purchase only);
3. House Price Index derivatives; and
4. credit derivatives.

1.9.4 Risk analysis should extend beyond static gap/static sensitivity analysis to (for example):

1. dynamic simulation (such as projecting forward balance sheet elements and simulating the impact of different interest rate scenarios);
2. duration for individual portfolio elements, or present value of a basis point move calculations, to highlight sensitivity to non-parallel shifts in the yield curve; and
3. value at risk, using correlation/historic simulation and/or Monte Carlo simulation;
the impact on both earnings and economic value being assessed internally on a very regular basis.

1.9.5 Risk positions could reflect an interest view, subject to sensitivity limits set by the board/ALCO and incorporating basis risk assessment/control. Foreign exchange mismatch (i.e. exchange rate exposure) should be subject to appropriate risk management over foreign exchange movements.

1.9.6 It is likely to be appropriate for a society on the comprehensive approach to be a standard ILAS BIPRU firm.
1.10 "Trading" approach

1.10.1 The "Trading" approach is a category for those societies which wish to take advantage of the ability to trade in securities. Essentially, those societies will adopt the comprehensive approach for the purpose of managing interest risk arising in their banking book, but with additional policies, financial instruments, systems and expertise for managing the market risks inherent in running a separate trading book.

1.10.2 Such a society should control the additional market risks through a Market Risk Committee of the board and risk management systems should include complex portfolio management, option pricing and value at risk models.

1.10.3 It is likely to be appropriate for a society on the trading approach to be a standard ILAS BIPRU firm.
1.11 Supervisory approach to managing the lending book

1.11.1 BSOCS 1.12 to 1.14 provides guidance on the three models, or supervisory approaches, to managing the lending book described in BSOCS 1.3.3 G. An outline description of each approach is set out at BSOCS 1.12 to 1.14 and the Tables at the end of BSOCS 2 summarise the key features.
1.12 "Traditional" lending approach

1.12.1 Societies in the "Traditional" lending approach category should restrict their lending activities mainly to prime quality residential mortgages for owner-occupiers. The traditional approach should suit small or very small societies where lending decisions are fully underwritten on an individual basis, typically by the Chief Executive or a direct report, under clearly delegated mandates.

1.12.2 Societies adopting this approach should have board-approved lending policies that:

1. set a minimum limit of at least 85% of loan book for prime owner-occupied mortgages (subject to a mortgage indemnity guarantee or other recognised collateral for loan to values (LTV) in excess of 80%);

2. limit other types of lending within the maximum 15% balance to prime owner-occupied >80% to <90% LTV without external insurance, prime buy to let, shared ownership, social landlords and secured commercial lending (including fully secured on land) only;

3. require the use of approved independent valuers (in this context, independent valuer has the same meaning as in BIPRU 3.4.66 R (2));

4. require stress tests to be undertaken at least annually to identify potential shortfalls in the value of security and allow it to review the appropriateness of its lending limits; and

5. limit exposure to connected counterparties to <10% capital resources.
1.13 "Limited" lending approach

The "Limited" lending approach is suitable for societies that have a slightly higher appetite for credit risk than those on the traditional approach. Societies adopting this approach should control the amount of risk assumed through a comprehensive system of policy limits. These limits will prevent the society from becoming over-exposed to non-traditional lending, and will take account of the differing risks associated with the type of lending and the type of security held. In general it is anticipated that the limited approach will tend to suit medium-sized and larger societies where:

1. there is operational segregation between underwriting and the review/audit/compliance functions which check compliance with policy and legislation and which review lending/underwriting quality;

2. there is operational segregation between underwriting and the mortgage sales function;

3. lending decisions are fully underwritten on an individual or systematically credit-scored basis, under clearly delegated mandates; and

4. relevant specialist expertise is employed for non-traditional lending, with access to appropriate sources of external and internal information on how risks are developing.

Societies adopting this approach should have board-approved lending policies that:

1. set a minimum limit of at least 65% of total loan book for prime owner-occupied mortgages;

2. set sub-limits, both in terms of total loan book and lending in a twelve-month period, for other types of lending within the maximum 35% balance; and

3. require stress-testing and scenario analysis of outcomes to be undertaken at least semi-annually.
1.14 "Mitigated" lending approach

The "Mitigated" lending approach is suitable for societies that undertake a diverse range of lending. Societies adopting this approach should mitigate their risk through sophisticated credit risk management systems that control the amount of risk assumed, both through a comprehensive system of policy limits and through the operation of stochastic risk models. In general it is anticipated that the mitigated approach will tend to suit only the largest societies where:

1. there is a segregated and independent risk function reporting directly to the board (or a board-level committee);
2. there is full segregation between credit underwriting and the review/audit/compliance functions which check compliance with policy and legislation, and which review lending/underwriting quality;
3. underwriting is independent of mortgage sales function;
4. lending decisions are underwritten on an individual or systematically credit-scored basis (but subject to manual override), under clearly delegated mandates; and
5. relevant specialist expert teams are employed for non-traditional lending, with access to appropriate sources of external and internal information on how risks are developing.

Societies adopting this approach:

1. should have board-approved lending policies that set appropriate limits, both in terms of total loan book and lending in a twelve-month period, for each type of lending; and
2. should undertake full econometric risk analysis, stress-testing and scenario analysis of outcomes at least quarterly.
1.15 Review of financial risk management approach and assessment of lending approach

1.15.1 PRA

Societies should perform an initial review of their current financial risk management approach in the light of the guidance in BSOCS and undertake a self-assessment of controls over their lending book in the light of the BSOCS lending criteria. Having done so, the society should inform its supervisor at the PRA in writing of the approaches that it considers are the ones most suited to its systems and controls for managing financial and lending risks, provide details of any features of its systems, controls or activities that fall outside the parameters of those approaches, and discuss with its supervisor what, if any, actions are needed on the part of the society to address these. This should be completed by 1 October 2010.

1.15.2 PRA

The PRA recognises that, where the need to make changes to funding profile, treasury investments or lending profile to achieve compliance with SYSC is identified, it is likely that the move to achieve this will be gradual. The PRA will discuss with each society an appropriate period of time over which any realignment should be undertaken.

1.15.3 PRA

Subsequent to this initial review, societies should continue to review the suitability of their allocated approaches as appropriate and speak to their supervisor at the earliest opportunity if they anticipate that their systems, controls or activities will fall outside the parameters of those approaches.
1.16 Interpretation

In this sourcebook "administered rate" is defined as a rate of interest (which may be applied to lending or funding) which is, to the extent compatible with regulatory requirements and the general law, set from time to time at the discretion of the society and is not geared automatically to changes in an external reference rate, subject to the following:

(1) a society operating under the administered or matched approaches to financial risk management that chooses to set a contractual floor or cap should set nothing other than a floor (minimum rate receivable) on a rate charged on mortgages and/or a cap (maximum rate payable) on a rate payable to retail savers; these are the only limitations that may be applied to administered rate products allocated against the minimum policy limit; and

(2) a society not operating on either of the approaches in (1) may choose to include any guarantee in combination with an administered rate; it would however be expected to set appropriate sub-limits to control the level of basis and re-pricing risk taken, and to be able to evidence that it has assessed the cumulative impact of all such guarantees on its ability to vary rates generally as part of its regular stress and scenario testing programme.

1.16.2 In this sourcebook "total loan book" is defined as total outstanding lending whether secured on property or unsecured.

1.16.3 For the purposes of BSOCS 2.6.3 G, loans to companies or partnerships secured on buy-to-let property should always be considered commercial.

1.16.4 In this sourcebook reference to the term of any funding or treasury investment (including those held to comply with BIPRU 12) should in all cases be taken to mean the residual date to maturity.

1.16.5 The status of the provisions in BSOCS is indicated by icons containing the letters R or G. Please refer to chapter six of the Reader’s Guide for further explanation about the significance of these icons. The Reader’s Guide can be found at http://www.fca.org.uk/your-fca/documents/handbook/handbook-readers-guide
Chapter 2

Lending
2.1 Introduction

(1) This chapter sets out PRA guidance on the management by societies of their lending, using the three approaches to lending set out in BSOCS 1, in order to enable them to comply with the requirements in SYSC 4 to SYSC 7. The chapter outlines factors the PRA will consider when assessing whether a society meets these requirements in relation to lending risk management.

(2) A list of the types of lending suitable for societies managing risk according to each of the three levels of lending risk management, together with appropriate controls, is set out in the tables at BSOCS 2.5.2 G and BSOCS 2.6.3 G.
2.2 Risks of mortgage lending

Affordability

The primary risk associated with mortgage lending is that the borrower will be unable or unwilling to service the loan. In this respect, some types of mortgage will present greater risks than others. In particular, risks are likely to be increased for lenders (and in some cases also for consumers):

1. where repayment commitments represent an unusually high percentage of disposable income; or
2. where an unusually large proportion of the borrower’s income is variable; or
3. where the borrower has an impaired credit history.

Societies should ensure that they consider the risk profile of the different types of lending that they undertake, put sub-limits and other mitigating controls in place where they consider it appropriate and price their lending to reflect the perceived residual risks.

2.2.2

Societies should also consider when product features such as fixed mortgage rates expire and whether to set a maturity profile. If large numbers of mortgage loans revert to, for example, another base rate or a standard variable rate (SVR) simultaneously the society may experience operational strain dealing with the associated administration and customer queries.

2.2.3

Societies may need to respond to a significant number of customers experiencing payment shock at the same time. In such a situation a society may experience a profitability strain resulting from abnormally high redemption levels.

2.2.4

Whilst non-sterling mortgages expose a society to foreign exchange risks (covered further within ■ BSOCs 3 to ■ BSOCs 5) as well as all other risks which normally attach to mortgage lending, it may also expose the borrower to exchange rate risk which, if it crystallises, impacts on their ability to afford the loan. Societies (other than those with the most sophisticated lending risk management controls) should therefore set very conservative limits for such business, and confine such loans to borrowers with income denominated in the relevant currency.
Societies must also comply with the general law and other regulatory requirements, including those in MCOB and the Principles for Businesses, relating to affordability and other aspects of granting a mortgage.

Valuation of security

If a mortgage fails to perform, a society ultimately relies upon the value of its security to safeguard its interests, so the reliability of the value is important. The integrity, competence and expertise of the valuer are important, particularly where experience in more complex valuation areas (for example, related to commercial lending) is needed.

In addition to general property price movements, significant local price variations can occur. Therefore lending outside a society's home area (or for larger societies lending on overseas property) can have an increased risk if local price drivers are not fully appreciated. Societies should consider this in setting their lending policy, balancing the potential risks against the advantages of lowering the concentration risk to which they might be exposed.

Automatic valuation models (AVMs)

If a society proposes to use an automatic valuation model (AVM), either as part of its loan origination process or subsequent revaluation for credit decision purposes, it should do so within the terms of clear and well-considered policies. In doing so it should note that, in the calculation of the credit risk capital component, in relation to risk weights assigned to exposures secured by mortgages on residential property,
  - BIPRU 3.4.77 R requires that the "property shall be valued by an independent valuer at or less than market value" and that an independent valuer is defined in
  - BIPRU 3.4.66 R as a "person who possesses the necessary qualifications, ability and experience to execute a valuation and who is independent from the credit decision process." This means that, for those purposes, the use of AVM output must always fall within a process leading to a valuation that can be ascribed to an independent valuer.

The society should also consider the limitations of AVMs before making a decision regarding whether an AVM is appropriate, particularly when the valuation plays an important role in the calculation of capital requirements. In determining a reasonable approach to AVMs a society should consider that:

1. all AVMs have estimation errors;
2. there are strengths and weaknesses of various AVMs. For example, many AVMs could be well suited to urban areas with many similar properties, but most will find it difficult accurately to value a property with little in common to those close by, for example in rural areas;
3. AVMs should not be used to value non-domestic properties.

The higher the LTV, the greater the risk that an over-valuation of the property could result in the CRD risk weighting being mis-stated. Societies should be particularly careful in those situations.
If a society chooses to use AVMs, its lending policy should set out clearly when it intends to do so. For example, it may set a maximum LTV or loan amount. A society should also have procedures for reviewing its use of AVMs based on experience and market developments.

Statistical methods, such as house price indices or AVMs, can also be used to monitor the value of a property, identify property that needs revaluation and amend valuations assigned to a property. The detailed rules concerning monitoring of property values for the purposes of calculating the credit risk capital component are contained in BIPRU 3.4.66R to BIPRU 3.4.71G. If AVMs are used in this way, the principles of AVM use are the same as for loan origination and societies should consider the appropriateness of AVMs to obtain a prudent value.

Non-traditional lending

(1) Non-traditional lending can present additional risks, when compared with the more conventional prime owner-occupied lending model. Societies should recognise this within their risk assessment and management processes, procedures and lending policy.

(2) BSOCS 2.2.14 G to BSOCS 2.2.21 G describe factors that societies should take into account in managing the risks associated with non-traditional lending; these are not exhaustive and not all points will be relevant to all societies.

Sub-prime lending

Whilst the risk of default on sub-prime owner-occupied lending is initially greater than that for prime (all other things being equal) the PRA recognises that sub-prime borrowers may demonstrate affordability over time. In these circumstances, the PRA is content for societies to reclassify seasoned sub-prime lending as prime after five years (at the LTV at origination), if they wish to do so.

Buy-to-let

(1) Whilst buy-to-let (BTL) lending is secured on residential property and therefore falls within the Building Societies Act nature limit (the statutory requirement that 75% of lending should be secured on residential property), it presents different risks to those of conventional residential mortgages to owner-occupiers.

(2) The PRA expects Boards and Management to recognise that existing experience and skills in residential mortgage lending do not simply transfer to buy-to-let and that the potentially significant differences in risk profile mean that different post-completion administration arrangements will be appropriate.

A society undertaking BTL lending should, when determining its risk appetite, have regard to the underlying commercial nature of this type of business. Relevant factors which societies should consider and address within their lending policy include:

(1) the degree to which the investor borrower is dependent on the cashflow performance of the investment property to service the loan;

(2) the basis on which the security is valued and rental income is assessed for underwriting purposes (including how rental voids are treated);
(3) what tenancy basis and kinds of BTL are acceptable;

(4) information required to assess the extent of the investor-borrower’s broader exposure to the BTL sector (e.g. total number of properties in portfolio and whether encumbered or unencumbered);

(5) the maximum permitted exposure to an investor-borrower or connected investor-borrowers (which may be based on value and/or number of investment properties held); and

(6) what post-completion loan administration is required (and the extent to which this is appropriate and proportionate to the underlying commercial nature of BTL lending) including:

(a) monitoring of exposures on a scheduled basis (e.g. annual review);

(b) requirements for the investor-borrower to provide financial information on a periodic basis which enables the lender to have an appropriate understanding of their overall exposure.

Equity release: Lifetime Mortgages and Home Reversion Plans

(1) *Lifetime mortgages* create a residential mortgage exposure (and fall within the nature limit) and also carry a morbidity risk associated with the potential deterioration of health of the borrower. In addition, those with interest roll-up features carry a mortality risk associated with the longevity of the loan, so their risks differ from conventional lending risks. Because of these risk characteristics the PRA would not expect limited approach societies to offer such products where any applicant is under 65, nor to extend loans greater than 25% LTV for borrowers of 65. If they wish to offer larger LTV advances to older borrowers they should ensure that they have appropriate actuarial expertise to enable them to assess the associated risks.

(2) *Home reversion plans* are likely to carry even more complex risks, since they not only have an actuarial risk but also expose lenders directly to variations in the market value of the property with which the individual plan is associated. As such, societies should enter those markets only if they have more sophisticated lending management control structures. In these circumstances, societies should set very conservative limits on the amount of such business that can be done.

Commercial lending

(1) Commercial property may require different valuation skills to domestic property, and historically has a higher default rate than conventional owner-occupied lending. It may or may not fall within the nature limits, depending on whether the business of the commercial enterprise is to provide residential property.

(2) Commercial lending can be divided into three broad types, owner occupied, commercial developments and investments. Each of these broad types typically has different associated risk profiles and is likely to require different risk management capabilities.

(3) Societies on different lending approaches are likely to have different risk management capabilities with respect to the three types. Societies on the
traditional approach should restrict themselves to owner-occupied commercial lending. The PRA would expect that societies on the limited approach might have the risk management capabilities to undertake small scale residential development (ten properties or less) or small scale commercial investments.

(4) Commercial lending may be "lumpy" in character, particularly that falling into the commercial investments category. When considering the risks associated with any commercial lending, societies should be mindful of the absolute size of individual loans, their absolute total exposure to commercial lending and the extent to which they are exposed to concentration risk, whether geographic concentration, concentration to particular counterparties or particular sectors of the economy.

(5) Societies should also be mindful of the additional complexity that may attach where commercial property is owned by a special purpose vehicle or where it is financed by a syndicated loan. Societies on either the traditional or limited approach should not undertake any syndicated lending.

(6) Societies should also ensure that when undertaking commercial lending they establish that a realistic alternative use exists for the property, in case they later have to enforce the security.

Social landlords (including Registered Social Landlords)

(1) Lending to housing associations can be difficult to evaluate and for smaller societies these can represent significant sized loans. Whilst loans may be low LTV, the saleability of underlying properties varies and would usually not be with vacant possession. As such, societies considering such lending should consider not only the portfolio valuation but also the financial management record of the landlord, including arrears management and losses through voids. The skills necessary to undertake such assessments are those of underwriting commercial lending rather than residential lending, combined with a good understanding of the sector and its risk profile.

(2) As such, societies should ensure that they have appropriate underwriting skills for this type of lending and that they set a maximum proportion of their lending book for these loans, to ensure that they retain a balanced portfolio.

Shared ownership lending

Shared ownership lending can be more complex than mainstream mortgage lending. Societies will need to assess the borrower’s ability to afford the loan, which may be more complicated than for traditional lending. In addition, the value of collateral may be affected by conditions imposed by the social landlord on resale, for example to market the property only to those groups identified as a priority by the local authority. Also, administering such lending is likely to be more resource-intensive than conventional lending, since the mortgage agreement is three-way and relationships with both the borrower and social landlord need to be maintained. Particular matters that societies should consider include (but are not necessarily restricted to) the following.

(1) In the event of default, if monies raised by repossession and sale of the share purchase are insufficient to cover the debt the society has protections allowing it to recoup certain losses from the social landlord’s share of the property so long as they have complied with required procedures at the time of extending the original and any subsequent amounts, and before taking action for arrears.
Societies should ensure that they understand what protection is available and have procedures to ensure compliance with procedural requirements.

(2) Security is held over the leasehold on the owned portion of the property, not the freehold. If the borrower fails to pay rent to the social landlord, the lease may be terminated by the landlord; if terminated then security for the loan would be lost. Whilst a social landlord must inform a society and give it time to remedy the breach to retain the security (costs recoverable under the mortgage protection scheme) societies should consider how they will manage such risk situations and decide as a matter of policy which if any costs they will consider paying.

Given the added complexity and costs of administering such lending, societies should set a maximum proportion of their lending book for such loans, to ensure that they retain a balanced portfolio.
2.3 Board and management responsibilities

2.3.1 To comply with SYSC 4.1.1 and SYSC 7.1.2, societies should have a lending policy. This should be agreed and formally approved by the board and be consistent with the society’s strategic plan and its financial risk management policy statement.

2.3.2 The board and management should take steps to ensure that staff involved in all aspects of lending are aware of the lending policy, both on an ongoing basis and particularly where the lending policy has been changed. What steps would be most appropriate to achieve this will depend on the number of staff concerned and the complexity of the lending policy.

2.3.3 To comply with SYSC 4.1.10R (Regular monitoring), societies should check, on a regular basis, that staff are complying with this lending policy.
2.4 Lending policy

This section provides guidance on the issues which should be addressed in the lending policy. The list of issues is not exhaustive, not all points will be relevant to all societies and societies may wish to combine some of the subjects within sections of their policy.

2.4.1 PRA

Contents of policy

The introduction section should include:

- background to the society’s approach to the management of credit risk, including its high-level lending strategy and its risk appetite expressed in a clear and numeric way that can be easily understood by all staff;
- ratification process for obtaining board approval, including amendments to the policy statement as well as complete revisions; and
- arrangements for, and frequency of, review (which should be conducted at least on an annual basis).

2.4.2 PRA

The objectives of the policy should cross-reference to the society’s general statement of risk appetite (as set out in its ICAAP for Pillar 2 capital adequacy purposes), and should set out the society’s general philosophical approach to lending.

2.4.3 PRA

The policy should set out the society’s business and operational characteristics, including:

- board controls and organisational structure/reporting lines;
- high level framework for ensuring compliance with MCOB and other regulatory requirements;
- delegation process and authorities;
- new product development process and approved sources of new lending business;
- marketing and administration controls; and
- processes for ensuring compliance with policy (including arrangements for internal audit review etc).
The risk management section should include a description of:

1. the risk management structure and reporting lines;
2. controls over underwriting quality and adherence to delegated limits;
3. how risks associated with untypical cash flow characteristics (including interest roll-up and payment holidays) are to be managed;
4. training and competence requirements for underwriters and mortgage sales staff;
5. the process for developing internal risk scoring systems and procedures for risk categorisation including monitoring of manual overrides;
6. large exposure limits for connected counterparties, by loan and borrower type;
7. exposure limits for individual portfolios, including BTL portfolios;
8. concentration risk exposure limits by product type, borrower type, security type, introducer and geographical area (expressed both in terms of the overall lending book and as a proportion of new lending in a given period);
9. limits on the acquisition of individual loans or portfolios of loans, either by way of sub-participation or syndication;
10. the processes for ensuring how the success of risk management is to be assessed and potential lessons captured and used to amend underwriting policy as necessary; and
11. the management information to be reported to the board.

The lending permitted section should include details of the lending which the society intends to undertake by borrower and property/security type and origination source, including (as applicable):

1. prime residential mortgage lending to individuals;
2. near/sub-prime residential mortgage lending to individuals;
3. buy-to-let mortgage lending to individuals and corporate bodies;
4. shared-ownership residential lending to individuals;
5. second-charge residential lending to individuals;
6. lifetime mortgage lending to individuals;
7. home reversion plans for individuals;
8. commercial mortgages for owner-occupiers;
9. commercial mortgages for investors (both individuals and corporate bodies);
(10) commercial property development loans, both on residential and commercial real estate;

(11) lending to registered social landlords; and

(12) unsecured lending to individuals (by way of personal loan, overdraft, credit card or otherwise).

The policy should also set out the acceptable types of security, including:

(1) which types of security are acceptable (title, tenure, construction, location etc);

(2) the maximum original loan to value ratio permitted for each lending type;

(3) requirements for additional security such as guarantees, charges over other assets, life cover, accident/sickness/unemployment cover or for additional credit insurance (mortgage indemnity guarantee or similar) (including procedures for checking that such cover can be relied upon and is effective and checking the credit worthiness of the provider);

(4) requirements for buildings insurance cover; and

(5) arrangements for obtaining a reliable security valuation (including procedures for appointing valuers, use of automated valuation models).

The underwriting requirements for each type of loan should be specified in the policy, including:

(1) minimum required levels of income (or rent) to confirm affordability of the loan for the borrower (including at higher rates of interest);

(2) information requirements for verifying stated income/outgoings levels (for both individuals and corporate borrowers);

(3) credit checks, credit scoring requirements, manual override flexibility arrangements;

(4) requirements for face-to-face interviews, site visits, use of specialist advisers;

(5) evidential requirements to establish the previous track record of the borrower; and

(6) any requirements for third party references.

The policy should set out the basis for pricing new lending, including:

(1) the required hurdle rate of return for new lending products;

(2) requirements for adjusting pricing to reflect risk;
(3) the approach to setting fees, routine charges and early repayment charges, etc; and

(4) the methodology for setting and collecting early repayment charges.

The policy should be consistent with the provisions relating to conduct of business that apply to the society under the Handbook and the general law, including those in MCOB and the Unfair Terms Regulations.

Lending approach

Having developed its lending policy statement, each society will be able to classify itself against one of the approaches set out in the table in BSOCS 2.5.1G and assess its lending types and lending limits against the guidance in BSOCS 2.6.1 G.
2.5 Lending risk management structures

The table in BSOCS 2.5.2 G describes the type of controls that the management of societies should put in place (and where appropriate clearly document within their lending policy documentation) in each of the three lending models to manage lending risk.

This table belongs to BSOCS 2.5.1 G. It sets out guidance on credit risk management processes and procedures in accordance with the three lending approaches referred to in BSOCS 1.1.2 G and dealt with in detail at BSOCS 1.11 to 1.14. It shows the criteria which societies should use in assessing the controls over their lending book, as detailed in BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a society’s credit risk management which are different from the PRA’s general expectation for societies on their respective lending approach. Societies should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

<table>
<thead>
<tr>
<th></th>
<th>Traditional</th>
<th>Limited</th>
<th>Mitigated</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Asset characteristics</strong></td>
<td>Mainly restricted to high quality lending to individuals, secured on residential property for owner-occupation purposes:</td>
<td>A minimum of 50% of total loan assets to comprise high quality lending to individuals, secured on residential property for owner-occupation purposes:</td>
<td>Exposures to non-traditional lending allowed up to statutory maxima but controlled through:</td>
</tr>
<tr>
<td>- high level</td>
<td>• LTV &lt;= 80% or with external insurance cover on higher LTV exposures or other recognised collateral</td>
<td>• LTV &lt;= 80% or with external insurance cover on higher LTV exposures or other recognised collateral</td>
<td>• Structure of board-approved limits (subject to PRA agreement)</td>
</tr>
<tr>
<td></td>
<td>• Fully underwritten</td>
<td>• Fully underwritten</td>
<td>• Credit risk mitigation</td>
</tr>
<tr>
<td></td>
<td>• Restricted affordability criteria</td>
<td>• Restricted affordability criteria</td>
<td>Other lending controlled through structure of board-approved limits set at levels comfortably</td>
</tr>
<tr>
<td></td>
<td>Traditional</td>
<td>Limited</td>
<td>Mitigated</td>
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<tr>
<td>--------------------------------</td>
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<td>-----------</td>
</tr>
<tr>
<td><strong>Lending policy statement</strong></td>
<td>Approved by board and reviewed at least annually</td>
<td>Board or appropriate committee to set clear hurdle return required on loan book as minimum approach - use of economic capital and risk-based return modelling encouraged</td>
<td></td>
</tr>
<tr>
<td><strong>Pricing model</strong></td>
<td>Board to set clear hurdle return on new lending and articulate this through key operational plans</td>
<td>Clear delegated responsibility for monitoring actual return achieved v hurdle on regular periodic basis</td>
<td></td>
</tr>
<tr>
<td><strong>Risk appetite statement</strong></td>
<td>Approved by board at least annually</td>
<td>Approved by board at least annually</td>
<td>Approved by board or credit risk committee (or similar) at least annually</td>
</tr>
<tr>
<td></td>
<td>Reviewed to consider continued applicability at least semi-annually</td>
<td>Reviewed to consider continued applicability quarterly</td>
<td></td>
</tr>
<tr>
<td><strong>Risk management structure</strong></td>
<td>If no dedicated risk management function, CEO/FD will fulfil this role</td>
<td>Risk management function (fully independent of lending and sales functions) reporting direct to CEO</td>
<td>Head of Risk function (senior executive) supported by risk management team, reporting to credit risk committee (or similar)</td>
</tr>
<tr>
<td><strong>Loan exposure restrictions</strong></td>
<td>Lending policy restricts exposure to connected counterparties to &lt;= 10% of capital resources</td>
<td>Lending policy restricts exposure to connected counterparties absolutely to &lt;= 15% of capital resources</td>
<td>Lending policy does not restrict exposures within statutory or regulatory limits</td>
</tr>
<tr>
<td><strong>Underwriting</strong></td>
<td>Cases fully underwritten on an individual basis</td>
<td>Independent underwriting function</td>
<td>Independent underwriting function</td>
</tr>
<tr>
<td></td>
<td>Limited delegation under mandates</td>
<td>Cases underwritten individually or systematically credit scored</td>
<td>Cases systematically credit scored (with manual over-ride where appropriate)</td>
</tr>
<tr>
<td></td>
<td>Board to approve all loans where aggregate exposure to borrower and/or connected clients =&gt; 2.5% of capital resources</td>
<td>Hierarchy of fully delegated mandates (with exception reporting to senior management)</td>
<td>Hierarchy of fully delegated mandates</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appropriate specialist expertise for all categories of non-residential lending</td>
<td>PD/LGD modelling</td>
</tr>
<tr>
<td></td>
<td></td>
<td>May use specialist anti-fraud systems</td>
<td>Portfolio underwriting</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appropriate specialist expertise for all categories of non-residential lending</td>
<td>Appropriate specialist expertise for all categories of non-residential lending</td>
</tr>
<tr>
<td>Risk mitigation</td>
<td>Traditional</td>
<td>Limited</td>
<td>Mitigated</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
<td>---------</td>
<td>-----------</td>
</tr>
<tr>
<td></td>
<td>Risks mitigated by combination of:</td>
<td>Risks mitigated by combination of:</td>
<td>Risks mitigated by combination of:</td>
</tr>
<tr>
<td></td>
<td>• conservative LTV or external insurance on exposures &gt; 80% LTV</td>
<td>• conservative LTV or external insurance on exposures &gt; 80% LTV</td>
<td>• external insurance (where used)</td>
</tr>
<tr>
<td></td>
<td>• other recognised collateral</td>
<td>• other recognised collateral</td>
<td>• other recognised collateral</td>
</tr>
<tr>
<td></td>
<td>• restricted affordability criteria</td>
<td>• stop-loss/excess of loss insurance</td>
<td>• stop-loss/excess of loss insurance (or similar) at pool or portfolio level</td>
</tr>
<tr>
<td></td>
<td>• other recognised collateral</td>
<td>• stop-loss/excess of loss insurance</td>
<td>• credit default swaps</td>
</tr>
<tr>
<td></td>
<td>• restricted affordability criteria</td>
<td>• stop-loss/excess of loss insurance</td>
<td>• loan book sales</td>
</tr>
<tr>
<td>Valuations</td>
<td>Undertaken by independent valuer</td>
<td>Undertaken by external or staff valuer</td>
<td>Undertaken by external or staff valuer</td>
</tr>
<tr>
<td></td>
<td>AVMs within parameters recorded in policy statement</td>
<td>AVMs within parameters recorded in policy statement</td>
<td>AVMs within parameters recorded in policy statement</td>
</tr>
<tr>
<td>Segregation of duty between:</td>
<td>Underwriting function and mortgage sales function (providing &quot;four-eyes&quot; check over lending)</td>
<td>Segregation at executive manager level</td>
<td>Segregation at an operational level</td>
</tr>
<tr>
<td></td>
<td>Underwriting function and the lending review/audit/compliance functions which check</td>
<td>Segregation at executive manager level</td>
<td>Segregation at an operational level</td>
</tr>
<tr>
<td></td>
<td>(1) compliance with underwriting and fraud policy and legislation; and</td>
<td>(1) compliance with underwriting and fraud policy and legislation; and</td>
<td>(1) compliance with underwriting and fraud policy and legislation; and</td>
</tr>
<tr>
<td></td>
<td>(2) lending/underwriting quality (by review of MI, live fraud cases, bad debt cases etc).</td>
<td>(2) lending/underwriting quality (by review of MI, live fraud cases, bad debt cases etc).</td>
<td>(2) lending/underwriting quality (by review of MI, live fraud cases, bad debt cases etc).</td>
</tr>
<tr>
<td>Stress testing</td>
<td>Simple stress testing (changes in security values based on appropriate HPI movements) undertaken on annual basis, or more frequently if market conditions warrant</td>
<td>Stress testing and scenario analysis (at level of individual asset pools) on semi-annual basis</td>
<td>Econometric analysis and full stress testing/scenario analysis on at least quarterly basis</td>
</tr>
<tr>
<td></td>
<td>Traditional</td>
<td>Limited</td>
<td>Mitigated</td>
</tr>
<tr>
<td>----------------</td>
<td>------------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>In this table:</td>
<td></td>
<td>Other recognised collateral = charge over acceptable assets, 3rd party guarantees etc</td>
<td></td>
</tr>
<tr>
<td>AVMs</td>
<td>automated valuation models</td>
<td></td>
<td></td>
</tr>
<tr>
<td>HPI</td>
<td>house price index</td>
<td></td>
<td></td>
</tr>
<tr>
<td>LTV</td>
<td>loan to value</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2.6 Lending types and lending limits

Given the lending risk management controls and processes set out in the table at BSOCS 2.5.2 G, the lending limits which societies following one of the three lending models have in their lending policy should resemble the table in BSOCS 2.6.3 G.

If a society plans to become exposed to mortgages of sub-types not covered in the table in BSOCS 2.6.3 G, they should speak to their supervisor before entering the market, and again if their exposure reaches an agreed threshold to be set by the supervisor based on the perceived risk characteristics of the sub-type.

This table belongs to BSOCS 2.6.1 G. It sets out the criteria which societies should use in assessing the controls over their lending book, as detailed in BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a society’s business model which are different from the PRA’s general expectation for societies on their lending approach. Societies should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

<table>
<thead>
<tr>
<th>Lending types</th>
<th>Normal loan to value at origination and other limits applying</th>
<th>Asset limits as % total loan book as lending in rolling 12 month period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tradition- al</strong></td>
<td>Prime owner-occupier &lt;= 80% LTV, or &gt;80% to 95% LTV with external insurance</td>
<td>Min 85%</td>
</tr>
<tr>
<td></td>
<td>&gt; 80% to &lt;= 90% LTV without external insurance</td>
<td>Max 7.5%</td>
</tr>
<tr>
<td></td>
<td>Prime Buy to Let &lt;= 70% LTV (min rental cover 130%, calculated assuming no void periods)</td>
<td>Max 15%</td>
</tr>
<tr>
<td></td>
<td>Shared ownership &lt;= 90% of share purchased by borrower</td>
<td>Max 10%</td>
</tr>
</tbody>
</table>
## Lending types and lending limits

<table>
<thead>
<tr>
<th>Lending types</th>
<th>Normal loan to value at origination and other limits applying</th>
<th>Asset limits</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>as % total loan book</td>
</tr>
<tr>
<td><strong>Limited</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social Landlords</td>
<td>&lt;= 80%</td>
<td>Max 7.5%</td>
</tr>
<tr>
<td>Commercial/FSOL</td>
<td>&lt;= 50%</td>
<td>Max 5%</td>
</tr>
<tr>
<td>Prime owner-occupier</td>
<td>In total of which:</td>
<td>Min 65%</td>
</tr>
<tr>
<td></td>
<td>&lt;= 80% LTV, or &gt;80% to 100% LTV with external insurance</td>
<td>Min 55%</td>
</tr>
<tr>
<td></td>
<td>&gt; 80% to &lt;= 95% LTV without external insurance</td>
<td>Max 10%</td>
</tr>
<tr>
<td>Prime Buy-to-Let</td>
<td>In total (min rental cover 125%, calculated assuming no void periods)</td>
<td>Max 25%</td>
</tr>
<tr>
<td></td>
<td>Of which no lending &gt; 80% LTV and LTV between 60% and 80%</td>
<td>Max 20%</td>
</tr>
<tr>
<td>Impaired credit history (all types)</td>
<td>&lt;= 70%</td>
<td>Max 10%</td>
</tr>
<tr>
<td>Lifetime mortgages</td>
<td>&lt;= 25% (min age of youngest applicant =&gt; 65)</td>
<td>Max 10%</td>
</tr>
<tr>
<td>Shared ownership</td>
<td>&lt;= 95% of share purchased by borrower</td>
<td>Max 15%</td>
</tr>
<tr>
<td>Social Landlords</td>
<td>&lt;= 80%</td>
<td>Max 15%</td>
</tr>
<tr>
<td>Commercial/FSOL</td>
<td>&lt;= 60%</td>
<td>Max 10%</td>
</tr>
<tr>
<td>Non-sterling mortgages</td>
<td>Only permitted where borrower also has income in relevant currency</td>
<td>Max 5%</td>
</tr>
</tbody>
</table>

**Mitigated**  
Any lending permitted subject to statutory constraints and to lending policy set by management.

In this table:

- FSOL = fully secured on land
- Shared ownership = part-owned by the occupier and part by a social housing provider. This does not include shared equity arrangements where the society takes part of the equity interest.
<table>
<thead>
<tr>
<th>Lending types</th>
<th>Normal loan to value at origination and other limits applying</th>
<th>Asset limits as % total loan book as lending in rolling 12 month period</th>
</tr>
</thead>
</table>

LTV is based at loan to value at origination and should be calculated after taking into account any alternative recognised collateral.
Chapter 3

Treasury investments and liquidity risk management
3.1 Introduction

(1) This chapter sets out the PRA’s guidance specific to societies on management of their treasury investments, using the five approaches to financial risk management set out in BSOCS 1 in order to enable them to comply with BIPRU 12, GENPRU 1.2 and SYSC 4 to SYSC 7.

(2) The chapter outlines factors the PRA will consider when assessing the adequacy of a society’s treasury investment risk management. A list of the types of asset suitable for inclusion as treasury investments for societies on each of the five levels of financial risk management capability is set out in the table at BSOCS 3.3.12 G.

3.1.2 Treasury investments may be held for a variety of purposes which broadly fall into three categories:

(1) assets held for inclusion in a society’s liquid assets buffer as required by BIPRU 12.7;

(2) other assets held operationally for matching and cash flow management purposes; and

(3) assets which management have decided to hold in order to generate income.

3.1.3 The guidance in this sourcebook relating to treasury investments applies to all treasury investments, regardless of the reason for which they are held.
3.2 Board and management responsibilities over treasury activities

Degree of risk

3.2.1 PRA

BSOCS 5 (Financial risk management) refers to the potential risks to societies of treasury activities. In particular, the size and complexity of some transactions can make them vulnerable to losses, and the impact of losses on individual transactions in the treasury area can be significant and immediate. Boards have ultimate responsibility for deciding the degree of risk taken by their societies, including all categories of treasury assets and risks arising from the management of treasury activities.

3.2.2 PRA

A society specialises in long-term mortgage lending which is financed mainly by liabilities which are contractually short-term. This feature of societies’ business creates maturity mismatches which can give rise to cash flow imbalances. To ensure that it can meet its obligations as they fall due, a society is required to hold an adequate liquid assets buffer of the kind described in BIPRU 12.7.

3.2.3 PRA

In addition to cash flow mismatches which occur over time, societies can face intra-day mismatches, as outflows may precede inflows. Societies should ensure that they manage this risk in full compliance with the intra-day liquidity management provisions of BIPRU 12.3.17 R to BIPRU 12.3.21 E.

Liquidity policy statements

3.2.4 PRA

(1) Societies should have a liquidity policy statement, which, among other things, includes the strategies, policies, processes and systems to manage liquidity risk, and the liquidity risk tolerance, required by BIPRU. Rules and guidance in relation to the responsibilities placed on a society's governing body to approve these strategies, policies, processes and systems and to establish and document a liquidity risk tolerance are set out in BIPRU 12.3.8 R to BIPRU 12.3.13 G. The liquidity policy should be approved by the society's board and be consistent with the society's strategic plan and its financial risk management policy statement. Societies should also have regard to the rules and guidance in GENPRU 1.2, and SYSC 4 to SYSC 7.

(2) Where a society chooses to hold treasury investments other than for the purposes of its liquid assets buffer, then the society's liquidity policy statement should include all such investments.

3.2.5 PRA

Liquidity policy statements should set out the board's objectives for liquidity risk management, the limits within which liquidity should be maintained, the range of treasury investments in which the society can invest and conditions under which authority is
exercised. The document should establish the framework for operating limits and high level controls, and should set out the board’s policy on credit assessment, ratings and exposure limits. Further guidance on the content of liquidity policy statements is set out in ■ BSOCS 3.3.

3.2.6

A liquidity policy statement should be a working document and personnel in the treasury and settlement areas should be familiar with its contents, as should members of ALCO and/or the Finance Committee. When aspects of the policy or limits change, the policy document should be amended as frequently as necessary. The board should agree all substantive changes.

3.2.7

Boards should establish the objectives for liquidity risk management, including meeting obligations as they fall due (including any unexpected adverse cash flow), smoothing out the effect of maturity mismatches and the maintenance of public confidence. The need to earn a return on treasury investments may also be recognised as an objective, although this should be secondary to the security of the assets. Societies should also have regard to the rules and guidance in ■ BIPRU 12.

3.2.8

If a society enters into a formal arrangement with a broker where securities are delivered to and from the broker and a customer agreement between the broker and the society is completed, the society should differentiate between advice and discretionary fund management. If the society has entered into an agreement involving the provision of advice, it should ensure that no transaction is undertaken without its prior consent. As with discretionary fund management, societies should make certain that all transactions are within the terms of its liquidity policy statement.

3.2.9

Guidance on the content of a liquidity policy statement is set out in ■ BSOCS 3.3. Societies may, for convenience, wish to combine their liquidity policy statement with documentation required to satisfy the provisions of ■ BIPRU 12.4 relating to contingency funding plans. If they do so, societies need to be clear how any combined document meets the separate requirements.
3.3 Liquidity policy statement

This section provides guidance on the issues which should be addressed in a liquidity policy statement. The list of issues is not exhaustive and not all points will be relevant to all societies.

3.3.1 PRA

The introduction section should include:

1. background to the society’s approach to liquidity risk management;

2. the ratification process for obtaining board approval, including amendments to the policy statement as well as complete revisions; and

3. arrangements for, and frequency of, review (which should be conducted at least on an annual basis).

3.3.3 PRA

The objectives section should set out whether the PRA has granted the society a simplified ILAS waiver of the kind described in BIPRU 12.6. A simplified ILAS BIPRU firm should still have a full liquidity policy statement.

3.3.4 PRA

The operational characteristics section should set out the society’s business and operational characteristics, which impact on the amount and composition of liquidity and treasury investments, and the intended range for liquidity and liquidity net of mortgage commitments as a percentage of SDL.

3.3.5 PRA

The risk management section should include:

1. exposure policies, including controls and limits as appropriate, for countries, sectors and counterparties, including exposure to brokers;

2. the policy adopted for the use of credit ratings, stating the minimum quality acceptable and procedures for ensuring credit ratings are up to date, together with other information such as market intelligence which should also be reviewed when considering how to make treasury investments;

3. the policy of assessment to be adopted towards sectors that are non-rated;

4. operational and settlement risk, including: framework of board authorisation, delegations and operating limits (including, inter alia, dealer limits, transaction and day limits); deal authorisation, confirmation checking, segregation of duties;
(5) the policy in regard to use of repo and reverse repo facilities and the potential encumbrance of treasury investments held;

(6) procedures and criteria for exceptional overrides in relation to dealing, operational rules, limits and authorisation; and

(7) the policy for liquidity risk management information and reporting to the board.

The maturity structure section should include the policy for maturity mismatch and a "maturity ladder" of treasury investments. This should give a clear view of the maturity pattern of treasury investments to be followed, showing the maximum proportions to mature within each time band. In relation to a society which is a simplified ILAS BIPRU firm, there should be a clear policy with regard to managing the peak cumulative wholesale net cash outflow over the next 3 months in order that an adequate liquid assets buffer is maintained.

The categories of assets and activities section should set out the society's policy for the following:

(1) assets held in the liquid assets buffer;

(2) inter-society and local authority deposits;

(3) repo/reverse repo (both gilt-edged stock and non-gilt-edged securities);

(4) stock lending;

(5) mortgage backed securities (including, where applicable, US) mortgage backed securities and covered bonds;

(6) foreign currency securities and the handling of foreign currency exposures (for those on the extended, comprehensive or trading approaches);

(7) commercial paper;

(8) bank deposits, certificates of deposit and other bank securities; and

(9) collateral eligible for use in the Bank of England's open market operations and discount window facility.

The society's policy for membership and use of any clearing system or depository should be set out clearly, including a section dealing with authorisation and operational controls.

Liquidity implications and the role of standby facilities should be included in the policy statement.

The role of external professional advisers should be clearly stated, where applicable.
 Custody arrangements should be clearly set out. If the arrangement is to use services provided by a broker then a society should ensure that it retains legal ownership of the investments.

This table belongs to BSOCS 3.1.1 G and sets out the criteria which societies should use in developing the review of financial risk management, as detailed in BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a society’s business model which are different from the PRA’s general expectation for societies on their respective treasury management approach. Societies should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

### TREASURY INVESTMENTS

<table>
<thead>
<tr>
<th>ADMINISTERED APPROACH</th>
<th>MATCHED APPROACH</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TREASURY INVESTMENTS</strong></td>
<td><strong>TREASURY INVESTMENTS</strong></td>
</tr>
<tr>
<td>Bank of England reserve account</td>
<td>Bank of England Reserve account</td>
</tr>
<tr>
<td>Call deposits: bank</td>
<td>No max</td>
</tr>
<tr>
<td>Term deposits: bank (includes CDs)</td>
<td>No max</td>
</tr>
<tr>
<td>Term deposits: societies</td>
<td>Max 15% SDL</td>
</tr>
<tr>
<td>Term deposits: Local Authorities/Regional Gvt</td>
<td>Max 10% SDL</td>
</tr>
<tr>
<td>Gilts &lt;3 years</td>
<td>No max</td>
</tr>
<tr>
<td>Treasury bills</td>
<td>No max</td>
</tr>
<tr>
<td>Designated money market funds</td>
<td>No max</td>
</tr>
<tr>
<td>Qualifying money market funds</td>
<td>No max</td>
</tr>
<tr>
<td>Reserve account</td>
<td>Standing deposit facility (if eligible)</td>
</tr>
<tr>
<td><strong>Bank of England CAPACITY</strong></td>
<td><strong>Simplified buffer requirement</strong></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>MINIMUM LIQUIDITY LIMITS</strong></td>
<td><strong>CURRENCY</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Sterling only</strong></td>
</tr>
<tr>
<td></td>
<td><strong>MATCHED APPROACH</strong></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### MINIMUM LIQUIDITY LIMITS

<table>
<thead>
<tr>
<th>Bank of England CAPACITY</th>
<th>Reserve account</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standing deposit facility (if eligible)</td>
<td></td>
</tr>
</tbody>
</table>

### CURRENCY

**Sterling only**

### EXTENDED APPROACH

<table>
<thead>
<tr>
<th>TREASURY INVESTMENTS</th>
<th>Bank of England Reserve account</th>
<th>No max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call deposits: banks</td>
<td>No max</td>
<td></td>
</tr>
<tr>
<td>Term deposits: banks (includes CDs)</td>
<td>Max 15% SDL</td>
<td></td>
</tr>
<tr>
<td>Term deposits: societies</td>
<td>Max 10% SDL</td>
<td></td>
</tr>
<tr>
<td>Term deposits: Local Authorities/Regional Gvt</td>
<td>Max 10% SDL</td>
<td></td>
</tr>
<tr>
<td>Gilts &lt;5 years</td>
<td>No max</td>
<td></td>
</tr>
<tr>
<td>Gilts &gt;5 years</td>
<td>Max 5% SDL</td>
<td></td>
</tr>
<tr>
<td>Supranational Bonds &lt;5 years</td>
<td>Max 5% SDL</td>
<td></td>
</tr>
<tr>
<td>Treasury bills</td>
<td>No max</td>
<td></td>
</tr>
<tr>
<td>FRNs, MTNs or fixed rate bonds &lt;5 years</td>
<td>Max 5% SDL</td>
<td></td>
</tr>
<tr>
<td>UK RMBS (senior securitised position only)</td>
<td>Max 5% SDL</td>
<td></td>
</tr>
<tr>
<td>UK covered bonds (CRD compliant only)</td>
<td>Max 5% SDL</td>
<td></td>
</tr>
</tbody>
</table>

### Bank of England CAPACITY

| Designated money market funds |
| No max |
| Qualifying money market funds |
| No max |
| Reverse repo (Gilts only, after agreement with supervisor) |

| Reverse repo | Up to limits above |

### MINIMUM LIQUIDITY LIMITS

| Simplified buffer requirement |
| Standing deposit facility |

### CURRENCY

**No less than 99.5% of total balance sheet assets and liabilities denominated in Sterling, US$ or € (whether on simplified**
buffer requirement or individual liquidity guidance if a standard ILAS BIPRU (firm)

### COMPREHENSIVE and TRADING APPROACHES

<table>
<thead>
<tr>
<th>TREASURY INVESTMENTS</th>
<th>Own defined limits based on market depth and marketability (subject to satisfying the requirements of BIPRU 12)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank of England CAPACITY</td>
<td>Reserve account</td>
</tr>
<tr>
<td></td>
<td>Standing deposit facility</td>
</tr>
<tr>
<td></td>
<td>OMO counterparty (subject to BoE acceptance)</td>
</tr>
</tbody>
</table>

### MINIMUM LIQUIDITY LIMITS

<table>
<thead>
<tr>
<th>CURRENCY</th>
<th>Any traded currency</th>
</tr>
</thead>
</table>

In this table:

- CDs = certificates of deposit
- FRN = floating rate note issued by bank or building society
- ILAS = individual liquidity adequacy standards
- MTNs = medium term notes
- OMO = open market operations
- RMBS = residential mortgage backed securities

Treasury Investments - all treasury investments including those held within the liquid assets buffer as required by BIPRU 12.7

In relation to minimum liquidity limits, a society that is a simplified ILAS BIPRU firm should note that the simplified ILAS approach does not relieve a simplified ILAS BIPRU firm from the obligation to hold liquidity resources which are adequate for the purpose of meeting the overall liquidity adequacy rule or from the obligation in BIPRU 12.3.4 R to assess and maintain on an ongoing basis the adequacy of its liquidity resources.
Chapter 4

Funding
4.1 Funding risks

Societies' core business, financing long-term residential mortgages with short-term personal savings, necessarily involves a high degree of maturity transformation, and this constitutes a major financial risk that all societies need to manage.

4.1.1 PRA

Wholesale markets may provide funding at a more definitive maturity than deposit funding, but may concentrate the refinancing risks societies face. Exposure to re-financing risk needs careful management, and an awareness of the risk of over-reliance on an assumption of continued access to the wholesale market.

4.1.2 PRA

The particular constitution of societies means that the scale of deposit funding has a significant impact on the position of investor members. The public perceives society share accounts to be as secure as (or even more secure than) bank deposits although they hold a subordinated creditor rank. A society which gears itself up significantly with wholesale funds thereby dilutes the security of its members, whilst at the same time increasing its refinancing and liquidity risks.

4.1.3 PRA

To access the wholesale markets some societies have been credit-rated by external agencies. Obtaining such a rating exposes the society to the danger of a change in market view of the sector or the society, and the process of obtaining and continuing management of the rating needs careful consideration and monitoring. The PRA would not expect societies on the Administered or Matched approaches to have external ratings, and would expect societies on the extended approach, if they have external ratings at all, to confine them to covered bond issues only.
4.2 Wholesale maturity structure for a society which is a simplified ILAS BIPRU firm

4.2.1 PRA
For simplified ILAS BIPRU firms BIPRU 12.6.10 R sets out how they should calculate the wholesale net cash outflow component of their simplified buffer requirement.

4.2.2 PRA
Whilst a society which is a simplified ILAS BIPRU firm may choose to fund lending activities with wholesale funding of duration greater than three months, such funding will still influence the peak cumulative wholesale cash outflow position (and thus the simplified buffer requirement) when it is within three months from maturity. Societies using wholesale funding should therefore manage their wholesale maturity profile so that it does not cause excessive volatility to their liquid assets buffer.

4.2.3 PRA
To achieve this, a society which is a simplified ILAS BIPRU firm should ensure that its maturity profile of wholesale funding, net of any maturing treasury assets held to redeem the funding, resembles the respective profiles in BSOCS 4.5.1G.
4.3 Funding limits

(1) Whilst the section 7 funding limit is expressed as a minimum of 50% share account funding, societies should, for prudential monitoring purposes, draw up a funding policy which incorporates an internal policy limit based on a maximum level of funds raised by means other than the issue of shares (i.e. an inversion of the “nature limit”). In order to avoid any possibility of an inadvertent breach of the 1986 Act, these internal policy limits should be set at levels below the 50% statutory maximum.

(2) Similarly, one of the conditions in BIPRU 12.6 to be satisfied by a firm for it to be eligible for a simplified ILAS waiver is that a minimum percentage of the firm’s total liabilities are accounted for by retail deposits. The funding policy drawn up by a simplified ILAS BIPRU firm should include an internal policy limit referring to a maximum percentage of the firm’s total liabilities accounted for by liabilities other than retail deposits (i.e. an inversion of the condition in BIPRU 12.6). This maximum percentage should be set at a level below that necessary to satisfy the conditions in BIPRU 12.6.

(1) In setting funding limits, the board should consider all funding requirements over the period of their society’s current corporate plan, and avoid setting limits at levels where usage is either unplanned or highly unlikely.

(2) Wholesale funding can be divided into three broad types originating from different sources: offshore/overseas retail deposits up-streamed to the society, deposits from non-financial / non-individuals and wholesale funding from the financial markets.

(3) Boards should set policy sub-limits for each of these sources as well as an overall limit (e.g. a society might set an overall deposit liabilities limit of 30%, with sub-limits of 25% for wholesale deposit funding and 10% for offshore/overseas funding, the total of the sub-limits exceeding the overall limit only on the basis that both could not be used to their full extent simultaneously or to the extent that some of the funding is both wholesale and offshore/overseas).
4.4 Repurchase (repo) transactions (including reverse repo)

4.4.1 PRA

The PRA would expect that societies adopting the extended, comprehensive or trading approaches to treasury management are likely to have the systems and capabilities to transact repo business. The PRA would expect that their boards would obtain full legal advice before agreeing counterparty documentation.

4.4.2 PRA

Whilst societies on the matched treasury risk management approach may have appropriate treasury risk management controls and procedures to undertake repo transactions, they should discuss any such plans with their supervisor before undertaking those transactions.
This table sets out guidance for wholesale funding in accordance with the five approaches (see ■ BSOCS 1.1.2G). It shows the criteria which societies should use in developing the review of financial risk management, as detailed in ■ BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a society’s business model which are different from the PRA’s general expectation for societies on their respective treasury management approach. Societies should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

### WHOLESALE FUNDING FROM FINANCIAL MARKETS

#### ADMINISTERED APPROACH

<table>
<thead>
<tr>
<th></th>
<th>Total Wholesale</th>
<th>Any single sector source</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL &amp; SECTORAL LIMITS</td>
<td>Max 10% SDL</td>
<td>Max 5% SDL</td>
</tr>
<tr>
<td>MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS</td>
<td>&lt; 3 mths</td>
<td>Max 5% SDL</td>
</tr>
<tr>
<td></td>
<td>&lt; 12 mths</td>
<td>Max 10% SDL</td>
</tr>
<tr>
<td>FUNDING INSTRUMENTS</td>
<td>Term deposits and facilities</td>
<td></td>
</tr>
<tr>
<td>EXTERNAL RATINGS</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Bank of England CAPACITY</td>
<td>Standing lending facility (if eligible) Discount window (if eligible)</td>
<td></td>
</tr>
<tr>
<td>CURRENCY</td>
<td>Sterling only</td>
<td></td>
</tr>
</tbody>
</table>

#### MATCHED APPROACH

<table>
<thead>
<tr>
<th></th>
<th>Total Wholesale</th>
<th>Any single sector source</th>
</tr>
</thead>
<tbody>
<tr>
<td>WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL &amp; SECTORAL LIMITS</td>
<td>Max 15% SDL</td>
<td>Max 7.5% SDL</td>
</tr>
<tr>
<td>MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS</td>
<td>&lt; 3 mths</td>
<td>Max 5% SDL</td>
</tr>
<tr>
<td></td>
<td>&lt; 12 mths</td>
<td>Max 10% SDL</td>
</tr>
</tbody>
</table>
## FUNDING INSTRUMENTS
- Term deposits and facilities
- CDs
- FRNs
- Fixed rate bonds
- Covered bonds
- Securitisations
- CP
- Repo

## EXTERNAL RATINGS
- Covered bonds only

## Bank of England CAPACITY
- Standing lending facility (if eligible)
- Discount window facility (if eligible)
- OMO counterparty (optional, subject to BoE acceptance)

## CURRENCY
- Sterling only

## WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL & SECTORAL LIMITS

<table>
<thead>
<tr>
<th>For societies wishing to operate the simplified ILAS approach</th>
<th>Total Wholesale</th>
<th>See conditions in BIPRU 12.6</th>
</tr>
</thead>
<tbody>
<tr>
<td>For standard ILAS BIPRU firms</td>
<td>Any single sector source</td>
<td>Max 7.5% SDL</td>
</tr>
</tbody>
</table>

## MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS

<table>
<thead>
<tr>
<th>For societies wishing to operate the simplified ILAS approach</th>
<th>&lt; 3 mths</th>
<th>Max 5% SDL</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 12 mths</td>
<td></td>
<td></td>
</tr>
<tr>
<td>&lt; 2 years</td>
<td></td>
<td>Max 15% SDL</td>
</tr>
<tr>
<td>As agreed individually</td>
<td></td>
<td>Max 20% SDL</td>
</tr>
</tbody>
</table>

## FUNDING INSTRUMENTS
- Term deposits and facilities
- Repo (after agreement with supervisor)
<table>
<thead>
<tr>
<th><strong>Bank of England CAPACITY</strong></th>
<th>Standing lending facility</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Discount window facility</td>
</tr>
<tr>
<td></td>
<td>OMO counterparty (optional, subject to BoE acceptance)</td>
</tr>
<tr>
<td><strong>CURRENCY</strong></td>
<td>No less than 99.5% of total balance sheet assets and liabilities denominated in Sterling, US$ or €</td>
</tr>
<tr>
<td><strong>COMPREHENSIVE APPROACH</strong></td>
<td>Total wholesale and sector limits as agreed individually</td>
</tr>
<tr>
<td><strong>W/SALE FUNDING FROM FINANCIAL MARKETS - OVERALL &amp; SECTORAL LIMITS</strong></td>
<td>As agreed individually</td>
</tr>
<tr>
<td><strong>MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS</strong></td>
<td>Term deposits and facilities</td>
</tr>
<tr>
<td></td>
<td>CDs</td>
</tr>
<tr>
<td></td>
<td>FRNs</td>
</tr>
<tr>
<td></td>
<td>Fixed rate bonds</td>
</tr>
<tr>
<td></td>
<td>Covered bonds</td>
</tr>
<tr>
<td></td>
<td>Securitisations</td>
</tr>
<tr>
<td></td>
<td>CP</td>
</tr>
<tr>
<td></td>
<td>Repo</td>
</tr>
<tr>
<td><strong>EXTERNAL RATINGS</strong></td>
<td>Yes</td>
</tr>
<tr>
<td>Bank of England CAPACITY</td>
<td>Standing lending facility</td>
</tr>
<tr>
<td></td>
<td>Discount window facility</td>
</tr>
<tr>
<td></td>
<td>OMO counterparty (subject to BoE acceptance)</td>
</tr>
<tr>
<td><strong>CURRENCY</strong></td>
<td>Any traded currency</td>
</tr>
<tr>
<td><strong>TRADING APPROACH</strong></td>
<td>Total wholesale and sector limits as agreed individually</td>
</tr>
<tr>
<td><strong>WHOLESALE FUNDING FROM FINANCIAL MARKETS - OVERALL &amp; SECTORAL LIMITS</strong></td>
<td>As agreed individually</td>
</tr>
<tr>
<td><strong>MATURITY STRUCTURE OF WHOLESALE NET CASH OUTFLOW FROM FINANCIAL MARKETS</strong></td>
<td></td>
</tr>
<tr>
<td>FUNDING INSTRUMENTS</td>
<td>Bank loans</td>
</tr>
<tr>
<td>---------------------</td>
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</tr>
<tr>
<td></td>
<td>B Soc loans</td>
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<tr>
<td></td>
<td>LA loans</td>
</tr>
<tr>
<td></td>
<td>CDs</td>
</tr>
<tr>
<td></td>
<td>FRNs</td>
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<td></td>
<td>Fixed rate bonds</td>
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<td><em>Covered bonds</em></td>
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<td>Securitisations</td>
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<tr>
<td></td>
<td>CP</td>
</tr>
<tr>
<td></td>
<td><em>Repo</em></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>EXTERNAL RATINGS</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Bank of England CAPACITY</th>
<th>Standing lending facility</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Discount window facility</td>
</tr>
<tr>
<td></td>
<td>OMO counterparty (subject to BoE acceptance)</td>
</tr>
</tbody>
</table>

| CURRENCY | Any traded currency |

In this and subsequent tables:

- CDs = certificates of deposit
- CPs = commercial paper
- FRNs = floating rate notes
- ILAS = individual liquidity adequacy standards
- LA loans = local authority loans
Chapter 5
Financial risk management
5.1 Introduction

This chapter contains guidance for societies on financial risk management which supplements the high level requirement in SYSC.

5.1.1 PRA

As part of the implementation of the Capital Adequacy Directive (CAD), the Banking Consolidation Directive (BCD) and the Markets in Financial Instruments Directive (MiFID), provisions relating to a society’s organisational and risk systems and controls have been introduced in SYSC 4 to SYSC 7. The guidance in this chapter generally explains the application of the high level requirements in SYSC 4 to SYSC 7 (even if there may not be a specific cross reference) in the context of financial risk management.

5.1.2 PRA

Rules and guidance on interest rate risk in the banking book are contained in BIPRU 2.3. Under these requirements a society should evaluate the effect of a standard interest rate shock specified by the PRA in that chapter. The result should be taken account of in the ICAAP.

5.1.3 PRA

Societies with a trading book will also be subject to a market risk capital requirement calculated in accordance with BIPRU 7. This is unlikely to be applicable to any societies apart from those on the “Trading” approach: see BSOCS 1.10. A society with foreign currency exposures will however be subject to the foreign exchange capital requirements in BIPRU 7 whether or not it has a trading book.
5.2 General

Systems for controlling and managing financial risks

5.2.1 PRA
In meeting the requirements of SYSC 4.1.1 R and SYSC 7.1.2 R in the context of financial risk management, a society should have an adequate system for managing and containing financial risks to the net worth of its business, and risks to its net income, whether arising from fluctuations in interest or exchange rates or from other factors.

Systems for controlling index-related risks

5.2.2 PRA
The arrangements, processes, and mechanisms required in SYSC 7.1.3 R should include systems and procedures for identifying, monitoring and controlling all material maturity mismatch, interest rate, base rate, foreign exchange and similar (e.g. index-related) risks, and for reporting exposures to senior management and the board of the society on a regular, and timely, basis. Societies should also have interest margin management systems in place to estimate the expected profitability of new mortgage and savings products, and to project forward the cumulative effect of mortgage incentives and loyalty schemes.

Credit limits for counterparties

5.2.3 PRA
Societies should have credit limits in place for all counterparties both for making treasury investments and for transacting derivative contracts (further guidance also in GENPRU 1.2 and BIPRU 12.4: stress testing and scenario analysis, and contingency funding plans).

Policy statement on financial risk management

5.2.4 PRA
In meeting the requirements in SYSC 7.1.4 R in the context of financial risk management, the board of a society should approve and periodically review a policy statement on financial risk management.

5.2.5 PRA
The policy statement establishes guidelines for the society’s senior managers on the control of financial risks, including: operational risk; structural risk; funding risk; and counterparty credit risk (including settlement). These documents should be consistent with the type of business undertaken by the society and compliant with sections 7 and 9A of the 1986 Act.

Policy statements on strategic framework for treasury operations

5.2.6 PRA
Policy statements should set out the strategic framework for treasury operations, recording the rationale for that framework, i.e. why and how treasury activities are expected to support the society’s core business, and the "approach" category being followed, derived,
where possible, from the results of a financial risk review (either by the society’s internal audit function or using external resources). They should clearly state the conditions under which authority is delegated to a board sub-committee, or to management, and should establish the operating limits and high level controls that will maintain exposures within levels consistent with the policy, and the procedures/controls on the introduction of new products or activities. Copies of the policy statements should be made available to, and read by, all personnel involved in treasury operations.
Most societies are susceptible to interest rate exposure arising not only as a result of changes (or potential changes) in the general level of interest rates or the relationship between short term and long term rates, but also from divergence of rates for different balance sheet elements (basis risk), for example, the risk that it may not be possible to decrease administered savings rates in line with decreases in money market (LIBOR) rates, resulting in a margin squeeze where lending is LIBOR-based. In this chapter, risks which arise from the different interest rate or currency characteristics of assets and liabilities, and from transactions based on other financial reference rates or indices, are referred to as "structural" risks.
5.4 Operational risks

The extension of society activities into more complex forms of funding, liquidity and off balance sheet instruments has dramatically increased the operational risks involved. The documentation, accounting treatment and settlement procedures for such instruments can be highly complex, with significant costs and penalties arising from operational mistakes. Societies involved in these areas of activity need rigorous management procedures and control systems to ensure that robust legal documentation is used, that compliance with market practice is achieved, and that deal recording and settlement systems are effective (with appropriate contingency arrangements in place).

Key risk categories

The key financial risks which, as envisaged in BSOCS 5.2.1 G, societies should manage and control, are:

1. maturity mismatch, including the risks:
   (a) that the society may be unable to refinance term wholesale borrowings on a rollover date due to general market conditions (which may or may not be related to the position of the society itself);
   (b) associated with the bunching of roll-over dates for wholesale funding or maturities of term retail funding;
   (c) from concentration on a limited number of funding providers, giving rise to increased dependence particularly on roll-over days; and
   (d) arising from the prepayment (early repayment) profile of mortgages, and those inherent in the early withdrawal characteristics of retail savings products (i.e. behavioural as opposed to contractual maturity risks);

2. interest rate risk to a society’s earnings (most significantly, to its interest margin) and to its economic value (the present value of future cashflows) arising from:
   (a) repricing mismatches, e.g. where, in a rising interest rate environment, liabilities reprice earlier than the assets which they are funding, or, in a falling rate environment, assets reprice earlier than the liabilities funding them (in both cases leaving the society with a reduction in future income); repricing risk is inherent in fixed rate instruments, the market value of which will change with interest rate movements (e.g. gilts), and unhedged fixed rate retail products (e.g. unhedged fixed rate mortgages funded by variable rate liabilities would yield less margin should the cost of the liabilities increase due to changes in market rates);
(b) yield curve risk, where unanticipated changes to the shape or slope of the yield curve will cause assets and liabilities to reprice relative to each other - possibly exposing positions which were hedged against a parallel shift in rates only;

(c) interest basis mismatches, arising from the imperfect correlation of rates on instruments with similar repricing characteristics, e.g. between LIBOR rates and mortgage rates (both of which are variable but are subject to different market forces), or between LIBOR and reference gilt rates, or between 3 and 12 month LIBOR rates etc. Risk can also arise where the underlying market rate is the same for matching assets and liabilities, but the margin paid relative to the offer rate diverges from the margin received relative to the bid rate;

(d) balance sheet composition, where an increase in the proportion of assets and liabilities repricing at fixed or variable wholesale market rates implies a reduced administered rate element in the balance sheet, which will nevertheless have to bear (at least in the short term) the full brunt of any rate changes required in order for a society to widen its margins, if necessary for business or profitability reasons (e.g. in the event of a significant credit deterioration leading to rising provision levels);

(e) optionality (i.e. explicit/contracted option contracts, such as "caps", "collars" and "floors", which confer the right, but not the obligation, to fix an interest rate for an agreed amount and for an agreed period and embedded/implied options included within products, such as early withdrawal or redemption entitlements), magnifying the effect of other interest rate risks: in particular, societies may be subject to implied optionality in respect of retail savings rates (for which a minimum rate payable - a "floor" - above 0% may need to be assumed), and from prepayment of mortgages/pre-withdrawal of deposits (where the customer may effectively have an "option" which may not be adequately "hedged" by way of early repayment charges); and

(f) product pricing, arising particularly where products are not immediately profitable and where longer term payback is dependent upon the achievement of specific cost and/or pricing assumptions;

(3) currency risk, arising from the effects of changing exchange rates on unmatched assets and liabilities denominated in different currencies; and

(4) index-related risk, arising from the effects of movements in an index of financial assets (e.g. the FTSE 100), or similar reference rate, on unmatched assets or liabilities paying or receiving a return based on that index/rate.

Societies' financial risk management policies should also cover:

(1) settlement risk: the risk of losses arising from failure to settle transactions accurately, or on a timely basis;

(2) counterparty risk: associated with settlement risk, where a counterparty cannot or will not complete a transaction; and

(3) operational risk in treasury and related activities: including failure of internal controls or procedures, and the risk arising from errors in legal documentation.
Reliance on computerised dealing, information, treasury management and risk assessment systems renders societies particularly vulnerable to software or hardware failure. Boards of societies should:

1. ensure that treasury IT systems’ access, both physical and logical, is subject to robust security;

2. exercise strong control over the development and modification of treasury IT systems; and

3. involve internal audit in reviewing the development or modification of treasury IT systems.
The guidance in this section amplifies SYSC 7.1.2 R and SYSC 7.1.3 R specifically in the context of treasury management. A society should have in place information systems that are capable of:

1. measuring the level of maturity mismatch and structural risk inherent in its balance sheet;
2. assessing the potential impact of interest rate (and, if applicable, currency exchange rate) changes on its earnings and its economic value (including the effect of any standard interest rate shock as specified by the PRA in BIPRU 2.3);
3. reporting accurately, and promptly, on risk positions (to management, to the board and, if requested, to the PRA) including generating the information necessary to carry out its ICAAP and reporting the results of stress testing for interest rate risk in the banking book;
4. recording accurately, and on a timely basis, all new transactions and/or cashflows which will affect calculations of structural risk exposures;
5. managing the settlement timetable and processes for individual treasury instruments; and
6. monitoring credit risk and settlement risk positions incurred with individual and groups of counterparties.

The scale and scope of the risk measurement system employed should reflect the sophistication of a society’s treasury operations, those societies wishing to adopt more sophisticated approaches requiring more complex techniques to capture different facets of risk.

Control limits

Control limits confine structural risk positions within levels considered by board and management to be prudent, given the size, complexity and capital needs of the society’s business. Where applicable, limits should also be applied to individual instrument types, asset/liability portfolios, and to separate business activities or subsidiary undertakings. Limits should also cover both the quantum and term/run-off of positions and should take due account of the extent to which margins are constrained, limiting business flexibility.
The structure of limits should enable the board and management to monitor actual levels of sensitivity, under different pre-defined market index, interest rate and exchange rate scenarios, against the policy specified maxima, to ensure that corrective action can be taken if required.

The number and type of limits which should be applied will depend upon the relative sophistication of a society's treasury operations, and further guidance on the PRA's expectations for each policy approach is set out in BSOCS 1.6 to BSOCS 1.10.

Where limits are set as part of the overall board policy, these should be treated as absolute. Therefore any limit exceptions should be reported immediately to executive managers, and the policy should make clear what action is expected of management in those circumstances (including arrangements for informing the board and the PRA of the breach). Limits set by management should similarly be subject to clear guidelines covering the circumstances and periods for which breaches may be permitted (if at all) and the arrangements for notification of exceptions.

Stress testing

(1) The risk measurement systems put in place should evaluate the impact, on income or economic value as appropriate, of abnormal market conditions. The amount and type of the stress testing required will depend upon the sophistication of treasury operations undertaken, and the level of risk taken, but where required should be regular and systematic. Within the range of scenarios tested, it is good practice for the scenario to reflect the events that would cause the society's business model to fail without any mitigating management action. Boards and management should, periodically, review the extent of that stress testing to ensure that any "worst case" scenarios remain valid. Contingency plans should be in place to deal with the consequences should those scenarios become reality.

(2) Rules and guidance on stress testing and scenario analysis are in GENPRU 1.2 and BIPRU 2.2. Material on this subject specifically relating to liquidity risk, including liquidity contingency funding plans, is in BIPRU 12.4. Requirements for stress testing for interest rate risk in the banking book are set out in BIPRU 2.3.

Board information reporting

The PRA attaches considerable importance to the quality, timeliness, and frequency of the management information which the board uses to satisfy itself that treasury activities are being undertaken in accordance with its policies and guidelines. Information obtained by the board should include regular and systematic stress testing, as described above, which should be taken into account when policies and limits are established or reviewed.
5.6 Counterparty risk

5.6.1 PRA

Counterparty limits should cover:

(1) full risk exposures (e.g. deposits or marketable instruments);

(2) market risk exposures (e.g. mark to market positive value of swaps, plus appropriate addition for potential future exposure increases arising from changes in market rates); and

(3) settlement risk exposures (e.g. currency deals where amounts are paid out before funds are received).

5.6.2 PRA

Boards should determine the extent to which authority to set counterparty limits is delegated to management, but delegation to a single individual should not be permitted. Personnel with dealing mandates should not be given authority to set new or increased counterparty limits. No dealings should take place with counterparties which do not have a pre-approved limit.

5.6.3 PRA

Limits should be established on the basis of a robust methodology, which should be fully documented and reviewed regularly. For societies with more active treasury operations, a separate credit risk committee with responsibility for preparing a credit policy statement and counterparty list may be appropriate; less active societies may incorporate a section on credit risk within their liquidity policy statements, with appropriate cross-references to other policy and procedures statements. In all cases, the counterparty list and individual limits should be subject to formal credit review at least annually, with interim arrangements in place to add, amend or remove limits as appropriate.

5.6.4 PRA

(1) If reliance is placed on sources of information or opinion external to both the society and the counterparty (e.g. rating agencies), the nature of the source, and arrangements for ensuring that the information relied upon is kept up to date, should be made explicit in the credit risk policy document and in procedures manuals.

(2) Where ratings are reduced (or put on "watch" with "negative implications"), or where a society becomes aware of information on a counterparty which might affect its perceived creditworthiness (whether or not this results in a rate change), it should have systems for reviewing individual counterparty limits and, possibly, suspending or removing individual names from authorised lists in an expeditious manner.
(3) Arrangements for obtaining information on counterparties where this is in the public domain should also be included in procedures manuals.

Exposures to counterparties should be monitored on a consolidated basis, aggregating exposures of the society and any subsidiary undertakings (where applicable), and setting total exposure limits for groups of connected counterparties. Similarly, country, sector and market concentrations should be monitored continuously against agreed limits.

The guidance in this section complements the high level rules and guidance on credit and counterparty risk in SYSC 7.1.9 R to SYSC 7.1.11 R.

Large shareholdings and deposits

Undue dependence on individual funding sources that account for a large proportion of a society’s overall liabilities will involve risk of liquidity problems should those funds be withdrawn or not be available for roll-over. These potential problems apply whether the funds in question are raised from the retail or the wholesale markets.

A small society is relatively more exposed to this type of risk, and should consider the implications of concentration on individual shareholders or depositors when assessing its liquidity levels and need for committed facilities. In the management of large retail investment accounts, a society should normally avoid:

(1) obtaining funding from a single shareholder or depositor which exceeds 1% of shares, deposits and loans; and

(2) allowing the aggregate total of funding, from those single shareholders or depositors which individually represent more than one-quarter of 1% of shares, deposits and loans, to exceed 5% of shares, deposits and loans.

Committed facilities

A society with high levels of maturing funding, or vulnerability to withdrawal of individual deposits, may consider arranging committed facilities (or maintain higher than average levels of liquidity). In arranging committed facilities, a society should consider:

(1) the credit standing and capacity of the provider of the facility;

(2) the documented basis of the commitment (i.e. is it an unconditional commitment or a "best endeavours" arrangement); and

(3) the cost/fee structure compared to alternatives.

In extreme cases, there remains a risk that a provider may renege on a contractual commitment to provide funding, or purport to rely on widely drawn "events of default" or "material adverse change" clauses, and face the legal consequences (if any) rather than lend money to a society in difficulties. Societies should not, therefore, become over reliant on committed facilities to plug short term cashflow difficulties and should be cautious on how any such facilities should be treated in stress testing.
5.7 Independent review and controls

**Internal audit**

The guidance in this section amplifies SYSC 6.2.1 R in the context of treasury management. Each board should ensure that its society’s internal audit department (if it has one) has the skills and resources available to undertake an audit of the treasury function. Internal audit should evaluate, on a continuing basis, the adequacy and integrity of the society’s controls over maturity mismatch, over the level of structural risk taken and should assess the effectiveness of treasury management procedures.

5.7.1 PRA

Societies with complex treasuries or lacking internal auditors with treasury expertise may outsource treasury audit to an audit firm with the appropriate expertise and experience. The work of outsourced internal audit should be fully integrated into the society’s overall audit procedures and plans, with appropriate reporting lines into the audit committee. However, in order to avoid conflicts of interest, internal audit should not be contracted out to the society’s own external auditors, even if the function were to be performed by a completely different branch of the audit firm.

5.7.2 PRA

This table sets out guidance on financial risk management processes and procedures in accordance with the five approaches (see BSOCS 1.1.2 G). It shows the criteria which societies should use in developing the review of financial risk management, as detailed in BSOCS 1.15. It is designed to draw management and supervisory attention to areas of a society’s treasury risk management which are different from the PRA’s general expectation for societies on their respective treasury management approach. Societies should expect their supervisors to focus in greater detail on those areas of difference, to identify whether business risks and controls are aligned and if not to develop plans to address the mis-alignment. As such, these expectations should not be interpreted as hard limits but as input into establishing appropriate policies and the basis for supervisory dialogue.

### FINANCIAL RISK MANAGEMENT

**ADMINISTERED APPROACH**

<table>
<thead>
<tr>
<th>RISK MANAGEMENT</th>
<th>CEO (+FD/FM) &amp; Board</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Dealing / settlement segregation (4 eyes)</td>
</tr>
<tr>
<td>RISK ANALYSIS</td>
<td>None (but MTM fixed rate liquid assets at least monthly)</td>
</tr>
</tbody>
</table>
**FIXED RATE LENDING/FUNDING**
- Commercial assets: Minimum 95% on administered rates
- Liabilities: Minimum 95% SDL on administered rates
- No fixed rate lending > 1 year

**COUNTERPARTY LIMITS**
- Single name/connected group limits
- UK Counterparties only
- Instrument type and maturity limits

**HEDGING INSTRUMENTS**
- None

**TREASURY SYSTEMS/CONTROLS**
- Management accounting system
- Internal Audit

**MATCHED APPROACH**

**RISK MANAGEMENT**
- CEO + FD (or FM) & Board
- Dealing / settlement segregation (4 eyes)

**RISK ANALYSIS**
- Matching Report + (min mthly) Gap Analysis
- Minimal gap/NPV limits (to cover residuals, prepayment and pipeline only)
- No structural hedging (incl reserves)
- No interest rate view

* Basis risk report

**FIXED RATE LENDING/FUNDING**
- Commercial assets: A minimum of 65% either on administered rates or due to revert to administered rates in the next 12 months, and of that a minimum 50% already on administered rates.

- Liabilities: Minimum 65% SDL on administered rates

- Fixed rate lending/funding max 5 yrs to reprice date (subject to limits).

- Max stock fixed rate (> 1 yr) 20% commercial assets + 20% SDL

- Max fixed rate lending/funding 25% loans advanced/retail funding p.a.
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<th>Single name/connected group limits</th>
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<td>Country limits</td>
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<td>Instrument type and maturity limits</td>
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<td>Match funding</td>
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<td>HEDGING INSTRUMENTS</td>
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<td>Vanilla interest rate caps/collars/floors (purchase only)</td>
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<td>TREASURY SYSTEMS/CONTROLS</td>
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<td>Gap limits</td>
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<td>Sensitivity limits (NPV &amp; NII)</td>
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<td>Reserves hedging (strategic)</td>
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<td>No FX mismatch</td>
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<td><em>Basis risk</em> modelling</td>
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<tr>
<td>FIXED RATE LENDING/FUNDING</td>
<td>Commercial assets: A minimum of 50% either on administered rates or due to revert to administered rates in the next 12 months, and of that a minimum 30% already on administered rates.</td>
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<tr>
<td></td>
<td>Liabilities: Minimum 45% <em>SDL</em> on administered rates</td>
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<td>COUNTERPARTY LIMITS</td>
<td>Single name/connected group limits</td>
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<td>Multiple scenario &amp; yield curve simulation modelling with sensitivity limits</td>
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<td>(NPV &amp; NII)</td>
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<td>Interest view</td>
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<td>FX mismatch &lt; 2% own funds</td>
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<tr>
<td><strong>FIXED RATE LENDING/FUNDING</strong></td>
<td>Commercial assets: Minimum 30% on administered rates</td>
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<tr>
<td></td>
<td>Liabilities: Minimum 30% SDL on administered rates</td>
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<td>Complex interest rate caps/collars/floors (purchase only)</td>
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<td><strong>TREASURY SYSTEMS/CONTROLS</strong></td>
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<td></td>
<td>Specialist IT and Treasury Audit</td>
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</tbody>
</table>
### TRADING APPROACH

**RISK MANAGEMENT**
- FD + Treasurer (+Risk Director)
- ALCO + Daily Treasury Ctee
- Front + Middle + Back Office
- Banking + Trading books

**RISK ANALYSIS**
- Banking book: daily (min) duration / simulation analysis. Multiple yield curves and interest rate basis. Structural & reserve hedging
- Interest rate view.


**FIXED RATE LENDING/FUNDING**
- No limits

**COUNTERPARTY LIMITS**
- Comprehensive limit structure, including cross banking and trading book limits

**HEDGING INSTRUMENTS**
- Any available (subject to the 1986 Act s9A restrictions on use)

**TREASURY SYSTEMS/CONTROLS**
- Treasury IT system capable of projecting forward balance sheet and simulating different interest rate environments, plus measuring embedded optionality, *basis risk* etc.

*Trading book systems*
- Specialist IT and Treasury Audit

In this table:

- ALCO = Assets and Liabilities Committee
- HPIs = house price indices
- MTM = mark to market
- NII = net interest income
- NPV = net present value
Chapter 6

Business model diversification
6.1 Pre-notification of business model diversification

Any society which proposes to embark on any diversification into an area (whether regulated or unregulated, associated with the retail housing market or otherwise):

(1) which is not covered by the BSOCS tables; and

(2) where the investment (of any form) to set it up exceeds 5% of own funds or the projected post implementation income within any of the 3 years following the diversification exceeds 10% of projected net interest margin plus other income net of commission paid for that year;

should pre-notify the PRA and provide a board-approved best/worst case analysis of the risks and potential exit costs, together with a revised ICAAP for supervisory review and evaluation before proceeding, whether the proposed diversification is by acquisition or by investment to enter an area or facilitate organic growth.

Societies should also note the provisions of section 92A of the 1986 Act in relation to acquisition or establishment of a business.
Building Societies sourcebook

BSOCS TP
Transitional provisions
[deleted]
Schedule 1
Record keeping requirements

Sch 1.1 G
PRA

There are no record-keeping requirements in BSOCS.
There are no notification requirements in *BSOCS*. 
There are no requirements for fees in BSOCS.
Building Societies sourcebook

Schedule 4
Powers Exercised

Sch 4.1 G

The following powers and related provisions in or under the Act have been exercised by the FSA to make the rules in BSOCS:

- section 138 (General rule-making power)
- section 156 (General supplementary powers)

Sch 4.2 G

The following powers in the Act have been exercised by the FSA to give the guidance in BSOCS:

- section 157(1) (Guidance)
Sch 5.1 G

There are no rules in BSOCs which give rights of action for damages.
There are no rules in BSOCS that can be waived.
Collective Investment Schemes
Collective Investment Schemes

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2.1 Authorised fund applications

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10.2 The provisions in relation to fees for collective investments schemes are set out in FEES 1,2, 3 and 4

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10 Annex 2 [Deleted]

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Chapter 1

Introduction
1.1 Applications and purpose

Application

1.1.1 This sourcebook, except for COLL 9 (Recognised schemes), applies to:

(a) investment companies with variable capital (ICVCs);
(b) ACDs, other directors and depositaries of ICVCs;
(c) managers and trustees of authorised unit trust schemes (AUTs); and
(d) to the extent indicated, UK UCITS management companies operating EEA UCITS schemes.

1.1.1A This sourcebook does not apply to an incoming ECA provider acting as such.

EEA territorial scope: compatibility with European law

1.1.1B The territorial scope of this sourcebook is modified to the extent necessary to be compatible with European law.

1.1.1C This rule overrides every other rule in this sourcebook.

EEA UCITS management companies of UCITS schemes

1.1.1C An EEA UCITS management company that is providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom, or under the freedom to provide cross border services, is advised that where it operates a UCITS scheme as its designated management company, it meets the Glossary definition of an "ACD" of an ICVC or a "manager" of an AUT which in either case is a UCITS scheme. Such firms should be aware that provisions in this sourcebook that apply to an ACD or a manager of a UCITS scheme accordingly apply to them, unless otherwise indicated: see COLL 12.3 (EEA UCITS management companies) for further details.
1.1.2 FCA

Purpose

(1) The general purpose of this sourcebook is to contribute to the FCA meeting its statutory objectives of the protection of consumers. It provides a regime of product regulation for authorised funds, which sets appropriate standards of protection for investors by specifying a number of features of those products and how they are to be operated.

(2) In addition, this sourcebook implements part of the requirements of the UCITS Directive to meet EU law obligations relevant to authorised funds and management companies, with other requirements implemented in other parts of the Handbook.

UCITS management company and product passport

1.1.2A FCA

COLL 12 provides for the application of COLL in relation to the management company passport under the UCITS Directive. It explains how the passporting regime applies to both UK UCITS management companies and EEA UCITS management companies when providing collective portfolio management services on a cross-border basis. It also explains how the product passport (for UCITS) operates and how UCITS schemes may be marketed in other EEA States.

The Collective Investment Schemes Information Guide

1.1.3 FCA

The Collective Investment Schemes Information Guide COLLG provides some general background material on the regulatory structure surrounding scheme regulation in the UK.
1.2 Types of authorised fund

An application for an authorisation order must propose that the scheme be one of the following types:

1. a **UCITS scheme**;

2. a **non-UCITS retail scheme**, including:
   - a non-UCITS retail scheme operating as a fund of alternative investment funds (FAIF); and
   - a non-UCITS retail scheme which is an umbrella with sub-funds operating as:
     - FAIFs;
     - standard non-UCITS retail schemes; or
     - a mixture of (i) and (ii); or

3. a **qualified investor scheme**.

**Umbrella schemes**

Any authorised fund may be structured as an umbrella with separate sub-funds.

[Note: article 1(2) second paragraph of the UCITS Directive]

**Types of authorised fund - explanation**

1. **UCITS schemes** have to comply with the conditions necessary in order to enjoy the rights available under the UCITS Directive. Such schemes must in particular comply with:
   - COL 3.2.8 R (UCITS obligations); and
   - the investment and borrowing powers rules for UCITS schemes set out in COL 5.2 to COL 5.5.

2. **Non-UCITS retail schemes** are schemes that do not comply with all the conditions set out in the UCITS Directive. Such schemes could become
UCITS schemes provided they are changed, so as to comply with the conditions set out in the UCITS Directive. Non-UCITS retail schemes operating as FAIFs have wider powers to invest in collective investment schemes than other non-UCITS retail schemes.

(2A) A non-UCITS retail scheme may also be structured as an umbrella with sub-funds operating as:

(a) FAIFs;

(b) standard non-UCITS retail schemes; or

(c) a mixture of (a) and (b).

In these cases, rules relating to investment powers and borrowing limits apply to each sub-fund as they would to a scheme.

(3) Qualified investor schemes may only be promoted to professional investors on the same terms as unregulated collective investment schemes. Such schemes could change to become non-UCITS retail schemes or UCITS schemes.

(4) The changes referred to in (2) and (3) require approval by the FCA and further information on that process is provided in COLLG 3.1.5 G (Notification of changes to unit trusts (section 251)) and COLLG 4.1.3 G (Notification of changes to ICVCs (Regulation 21)).

**UCITS schemes**

A UCITS scheme is deemed to be established in the United Kingdom, irrespective of whether it has been established under the laws of England and Wales, Scotland or Northern Ireland.

[Note: article 4 of the UCITS Directive]

**Master UCITS**

A master UCITS that has two or more feeder UCITS as its only unitholders satisfies the requirement that a UCITS scheme must invest capital raised from the public.

[Note: article 58(4) of the UCITS Directive]
Chapter 2

Authorised fund applications
2.1 Authorised fund applications

Application

This chapter applies to any person seeking to arrange for the authorisation of a scheme.

Purpose

This chapter helps in achieving the statutory objectives of protecting consumers by ensuring that any application for authorisation of a fund meets certain standards.

Explanation

(1) This chapter sets out the requirements that a person must follow in applying for an authorisation order for a scheme under regulation 12 of the OEIC Regulations (Applications for authorisation) or section 242 of the Act (Applications for authorisation of unit trust schemes).

(2) COLLG 3 (The FCA’s responsibilities under the Act) and COLLG 4 (The FCA’s responsibilities under the OEIC Regulations) provide more information on what the Act and the OEIC Regulations require in relation to ongoing notifications to the FCA.

Specific requirements on application

An application for an authorisation order in respect of an authorised fund must be:

(1) in writing in the manner directed and contain the information required in the application form available from the FCA;

(2) addressed for the attention of a member of FCA staff responsible for collective investment scheme authorisation matters; and

(3) delivered to the FCA’s address by one of the following methods:
   (a) posting; or
   (b) leaving it at the FCA’s address and obtaining a time-stamped receipt; or
   (c) delivery by hand to a member of FCA staff responsible for collective investment scheme authorisation matters.
Application by an EEA UCITS management company to manage a UCITS scheme

An EEA UCITS management company that proposes to act as the manager of an AUT or the ACD of an ICVC that is a UCITS scheme, should be aware that it is required under paragraph 15A(1) of Schedule 3 to the Act to apply to the appropriate regulator for approval to do so. The form that the firm must use for this purpose is set out in SUP 13A Annex 3 R (EEA UCITS management companies: application for approval to manage a UCITS scheme established in the United Kingdom). In addition, those firms are required to provide to the appropriate regulator certain fund documentation, as specified by COLL 12.3.4 R (Provision of documentation to the FSA: EEA UCITS management companies).

[Note: article 20(1) of the UCITS Directive]
Chapter 3

Constitution
3.1 Introduction

Application

This chapter applies to:

1) an *authorised fund manager* of an AUT or an ICVC;
2) any other *director* of an ICVC;
3) a *depositary* of an AUT or an ICVC; and
4) an ICVC,

where the AUT or ICVC is a *UCITS scheme* or a *non-UCITS retail scheme*.

Purpose

This chapter assists in achieving the *statutory objective* of protecting *consumers*. In particular:

1) COLL 3.2 (The instrument constituting the scheme) contains requirements about provisions which must be included in the *instrument constituting the scheme* to give a similar degree of protection for investors in an ICVC or in an AUT; and
2) COLL 3.3 (Units) provides *rules* and *guidance* which deal with the *classes of units* to ensure that investors in each *class* are treated equally.
3.2 The instrument constituting the scheme

Application

This section applies to:

(1) an **authorised fund manager** of an **AUT** or **ICVC**;

(2) any other **director** of an **ICVC**;

(3) a **depositary** of an **AUT** or an **ICVC**; and

(4) an **ICVC**, except **COLL 3.2.8 R** (UCITS obligations), which applies only to an **ICVC** or to the **manager** of an **AUT** where the **ICVC** or **AUT** is a **UCITS scheme**.

Relationship between the instrument constituting the scheme and the rules

(1) The **instrument constituting the scheme** must not contain any provision that:

   a) conflicts with any **rule** in this sourcebook;

   b) prevents **units** in the **scheme** being marketed in the **United Kingdom**; or

   c) is unfairly prejudicial to the interests of **unitholders** generally or to the **unitholders** of any **class** of **units**.

(2) Any power conferred by the **rules** on the **ICVC**, the **authorised fund manager**, any other **director** of the **ICVC**, or the **depositary**, whether in a sole or joint capacity, is subject to any restriction in the **instrument constituting the scheme**.

The trust deed for AUTs

An **AUT** must be constituted by a **trust deed** made between the **manager** and the **trustee**.
Matters which must be included in the instrument constituting the scheme

The statements and provisions required by COLL 3.2.6 R (Table: contents of the instrument constituting the scheme) must be included in the instrument constituting the scheme, where appropriate.

The instrument constituting the scheme: OEIC Regulations and trust law requirements

(1) Several of the matters set out in COLL 3.2.6 R are required to be included in the instrument constituting the scheme under the OEIC Regulations or as a consequence of relevant trust law. In addition, further statements are required if the scheme or the authorised fund manager are to take advantage of the powers under the rules in this sourcebook.

(2) Additional matters which are not contained in COLL 3.2.6 R may be required to be included in the instrument constituting the scheme in order to comply with the OEIC Regulations, (particularly Schedule 2 - Instrument of Incorporation) and for the purposes of making the scheme eligible under relevant tax, pensions, or charities legislation.

Table: contents of the instrument constituting the scheme

This table belongs to COLL 3.2.4 R (Matters which must be included in the instrument constituting the scheme)

<table>
<thead>
<tr>
<th>Name of scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 A statement of:</td>
</tr>
<tr>
<td>(1) the name of the authorised fund; and</td>
</tr>
<tr>
<td>(2) whether the authorised fund is a UCITS scheme or a non-UCITS retail scheme.</td>
</tr>
</tbody>
</table>

Investment powers in eligible markets

2 A statement that, subject to any restriction in the rules in this sourcebook or the instrument constituting the scheme, the scheme has the power to invest in any eligible securities market or deal on any eligible derivatives market to the extent that power to do so is conferred by COLL 5 (Investment and borrowing powers).

Unitholder's liability to pay

3 A provision that a unitholder is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units which he holds.

Base currency

4 A statement of the base currency of the scheme.

Valuation and pricing

5 A statement setting out the basis for the valuation and pricing of the scheme.

Duration of the scheme
If the scheme is to be wound up after a particular period expires, a statement to that effect.

Object of the scheme

A statement:

(1) as to the object of the scheme, in particular the types of investments and assets in which it and each sub-fund (where applicable) may invest; and

(2) that the object of the scheme is to invest in property of that kind with the aim of spreading investment risk and giving unitholders the benefits of the results of the management of that property.

Where the authorised fund is a qualifying money market fund, a statement to that effect and a statement that the authorised fund’s investment objectives and policies will meet the conditions specified in the definition of qualifying money market fund.

Property Authorised Investment Funds

For a property authorised investment fund, a statement that:

(1) it is a property authorised investment fund;

(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and

(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the fund, the authorised fund manager is entitled to delay any redemption or cancellation of units in accordance with 18 if the authorised fund manager reasonably considers such action to be:

(a) necessary in order to enable an orderly reduction of the holding to below 10%; and

(b) in the interests of the unitholders as a whole.

Government and public securities: investment in one issuer

Where relevant, for a UCITS scheme, a statement in accordance with COLL 5.2.12 R (Spread: government and public securities) as to the individual states or bodies in which over 35% of the value of the scheme may be invested in government and public securities.

Classes of unit

A statement:

(1) specifying the classes of unit that may be issued, and for a scheme which is an umbrella, the classes that may be issued in respect of each sub-fund; and

(2) if the rights of any class of unit differ, a statement describing those differences in relation to the differing classes.
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Authorised fund manager’s charges and expenses</td>
</tr>
<tr>
<td>11</td>
<td>Issue or cancellation directly through the ICVC or trustee</td>
</tr>
<tr>
<td>12</td>
<td>In specie issue and cancellation</td>
</tr>
<tr>
<td>13</td>
<td>Restrictions on sale and redemption</td>
</tr>
<tr>
<td>14</td>
<td>Voting at meetings</td>
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<td>15</td>
<td>Certificates</td>
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<td>16</td>
<td>Income</td>
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<tr>
<td>17</td>
<td>Income equalisation</td>
</tr>
<tr>
<td>18</td>
<td>Redemption or cancellation of units on breach of law or rules</td>
</tr>
<tr>
<td>19</td>
<td>ICVCs: larger and smaller denomination shares</td>
</tr>
</tbody>
</table>

**Authorised fund manager’s charges and expenses**

10 A statement setting out the basis on which the *authorised fund manager* may make a charge and recover expenses out of the *scheme property*.

11 Where relevant, a statement authorising the *issue or cancellation of units* to take place through the ICVC or trustee directly.

12 Where relevant, a statement authorising payment for the *issue or cancellation of units* to be made by the transfer of assets other than cash.

13 Where relevant, the restrictions which will apply in relation to the *sale and redemption of units* under COLL 6.2.16 R (Sale and redemption).

14 The manner in which votes may be given at a meeting of *unitholders* under COLL 4.4.8 R (Voting rights).

15 A statement:

   (1) authorising the issue of *bearer certificates* if any, and how such *holders* are to identify themselves; and

   (2) authorising the *person* responsible for the *register* to charge for issuing any document recording, or for amending, an entry on the *register*, other than on the *issue or sale of units*.

16 A statement setting out the basis for the distribution or re-investment of income.

17 Where relevant, a provision for *income equalisation*.

18 A statement that where any holding of *units* by a *unitholder* is (or is reasonably considered by the *authorised fund manager* to be) an infringement of any law, governmental regulation or rule, those *units* must be redeemed or cancelled.

19 ICVCs: larger and smaller denomination shares

A statement of the proportion of a *larger denomination share* represented by a *smaller denomination share* for any relevant *unit class*.

ICVCs: resolution to remove a director
20 A statement that the ICVC may (without prejudice to the requirements of regulation 21 of the OEIC Regulations (The Authority's approval for certain changes in respect of a company), by a resolution passed by a simple majority of the votes validly cast for and against the resolution at a general meeting of unitholders, remove a director before his period of office expires, despite anything else in the ICVC's instrument of incorporation or in any agreement between the ICVC and that director.

ICVCs: unit transfers

21 A statement that the person designated for the purposes of paragraph 4 of Schedule 4 to the OEIC Regulations (Share transfers) is the person who, for the time being, is the ACD of the ICVC.

ICVCs: Charges and expenses

22 A statement that charges or expenses of the ICVC may be taken out of the scheme property.

ICVCs: Umbrella schemes - principle of limited recourse

22A For an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose.

AUTs: governing law for a trust deed

23 A statement that the trust deed is made under and governed by the law of England and Wales, Wales or Scotland or Northern Ireland.

AUTs: trust deed to be binding and authoritative

24 A statement that the trust deed:

(1) is binding on each unitholder as if it had been a party to it and that it is bound by its provisions; and

(2) authorises and requires the trustee and the manager to do the things required or permitted of them by its terms.

AUTs: declaration of trust

25 A declaration that, subject to the provisions of the trust deed and all rules made under section 247 of the Act (Trust scheme rules) and for the time being in force:

(1) the scheme property (other than sums standing to the credit of the distribution account) is held by the trustee on trust for the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of undivided shares in the scheme property represented by the units held by each unitholder; and

(2) the sums standing to the credit of the distribution account are held by the trustee on trust to distribute or apply them in ac-
cordance with COLL 6.8 (Income: accounting, allocation and distribution).

AUTs: trustee’s remuneration

26 Where relevant, a statement authorising payments to the trustee by way of remuneration for its services to be paid (in whole or in part) out of the scheme property.

AUTs: responsibility for the register

27 A statement identifying the person responsible under the rules for the maintenance of the register.

Investment in overseas property through an intermediate holding vehicle

28 If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles will be to enable the holding of overseas immovables by the scheme.

Umbrella scheme with only one sub-fund

3.2.7

(1) [deleted]

(2) [deleted]

(3) [deleted]

UCITS obligations

3.2.8

(1) The instrument constituting a UCITS scheme may not be amended in such a way that it ceases to be a UCITS scheme.

(2) [deleted]

(3) [deleted]
### 3.3 Units

#### Application

This section applies to an **authorised fund manager**, an **ICVC** and the **trustee** of an **AUT**.

#### Classes of units

(1) The **instrument constituting the scheme** may provide for different **classes of unit** to be issued in an **authorised fund** and, for a **scheme** which is an **umbrella**, provide that **classes of units** may be issued for each **sub-fund**.

(2) In order to be satisfied that COLL 3.2.2 R (Relationship between the instrument constituting the scheme and the rules) is complied with, the **FCA** will take into account the principles in (a) to (c) when considering proposals for **unit classes**:

   (a) a **unit class** should not provide any advantage for that **class** if that would result in prejudice to **unitholders** of any other **class**;

   (b) the nature, operation and effect of the new **unit class** should be capable of being explained clearly to prospective investors in the **prospectus**; and

   (c) the effect of the new **unit class** should not appear to be contrary to the purpose of any part of this **sourcebook**.

#### Currency class units

A **currency class unit** differs from other **units** mainly in that its **price**, having been calculated initially in the **base currency**, will be quoted, and normally paid for, in the currency of the designation of the **class**. **Income distributions** will also be paid in the currency of designation of the **class**.

#### Currency class units: requirements

For a **currency class unit**:

(1) the currency of the **class** concerned must not be the **base currency** (or, in the case of a **sub-fund** which, in accordance with a statement in the **prospectus**, is to be valued in some other currency, the currency of the **class** may be in the **base currency**, but must not be in that other currency);

(2) the **price** must be expressed in the currency of the **class** concerned;
(3) any distribution must be paid in the currency of the class concerned; and

(4) statements of amounts of money or values included in statements and in tax certificates must be given in the currency of the class concerned (whether or not also given in the base currency).

Rights of unit classes

(1) If any class of units in an authorised fund has different rights from another class of units in that fund, the instrument constituting the scheme must provide how the proportion of the value of the scheme property and the proportion of income available for allocation attributable to each such class must be calculated.

(2) For an authorised fund which is not an umbrella, the instrument constituting the scheme must not provide for any class of units in respect of which:

(a) the extent of the rights to participate in the capital property, income property or distribution account would be determined differently from the extent of the corresponding rights for any other class of units; or

(b) payments or accumulation of income or capital would differ in source or form from those of any other class of units.

(3) For a scheme which is an umbrella, the provisions in (2)(a) apply to classes of units in respect of each sub-fund as if each sub-fund were a separate scheme.

(4) Paragraphs (2) and (3) do not prohibit a difference between the rights attached to one class of units and to another class of units that relates solely to:

(a) the accumulation of income by way of periodical credit to capital rather than distribution; or

(b) charges and expenses that may be taken out of the scheme property or payable by the unitholders; or

(c) the currency in which prices or values are expressed or payments made; or

(d) the use of derivatives and forward transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between the currency of a class of units and either the base currency of the scheme or any currency in which all or part of the scheme property is denominated or valued (in this section referred to as a "class hedging transaction").
Hedging of unit classes

A class hedging transaction must:

(1) be undertaken in accordance with the requirements of ■ COLL 5 (Investment and borrowing powers); and

(2) (for the purposes of valuing scheme property and calculating the price of units in accordance with ■ COLL 6.3 (Valuation and pricing)) be attributed only to the class of units for which it is undertaken.

Guidance on hedging of unit classes

(1) Before undertaking a class hedging transaction for a class of units, the authorised fund manager should:

(a) ensure that the relevant prospectus clearly:
   (i) states that such a transaction may be undertaken for the relevant class of units; and
   (ii) explains the nature of the risks that such a transaction may pose to investors in all classes;

(b) consult the depositary about the adequacy of the systems and controls it uses to ensure compliance with ■ COLL 3.3.5A R (Hedging of unit classes); and

(c) consult the scheme auditor and, where appropriate, depositary to determine how:
   (i) the transaction will be treated in the scheme’s accounts; and
   (ii) any consequential tax liability will be met;

(2) Class hedging transactions should be entered into for the purpose of reducing risk by limiting the effect of movements in exchange rates on the value of a unit. Such transactions are not limited to currency class units. The authorised fund manager should ensure that the total value of the hedged position does not exceed the value of the relevant class of units unless there is adequate cover and it is reasonable for it to do so on a temporary basis for reasons of efficiency (for example, to avoid the need to make small and frequent adjusting transactions). In such cases, the difference between the value of the hedged position and the value of the class of units should not be so large as to be speculative or to constitute an investment strategy.

Requirement: larger and smaller denomination shares in an ICVC

(1) This rule applies whenever the instrument of incorporation of an ICVC provides, in relation to any class, for smaller denomination shares and larger denomination shares.
(2) Whenever a registered holding includes a number of smaller denomination shares that can be consolidated into a larger denomination share of the same class, the ACD must consolidate the relevant number of those smaller denomination shares into a larger denomination share.

(3) The ACD may, to effect a transaction in shares, substitute for a larger denomination share the relevant number of smaller denomination shares, in which case (2) does not apply to the resulting smaller denomination shareholding or holdings until immediately after the completion of the transaction.

Characteristics of larger and smaller denomination shares in an ICVC

Regulation 45 of the OEIC Regulations (Shares) allows the rights attached to a share in an ICVC of any class to be expressed in two denominations, in which case the 'smaller' denomination must be such proportion of the 'larger' denomination (a standard share) as is fixed by the ICVC's instrument of incorporation as described in COLL 3.2.6R (19). This will enable holdings to consist of more or less than a complete number of larger denomination shares.

Sub-division and consolidation of units

(1) The directors of an ICVC or the manager of an AUT may, unless expressly forbidden to do so by the instrument constituting the scheme, determine that:

(a) each unit of any class is to be subdivided into two or more units; or

(b) units of any class are to be consolidated.

(2) The ICVC or the manager must (unless it has done so before the sub-division or consolidation became effective) immediately give notice to each unitholder (or the first named of joint unitholders) of any sub-division or consolidation under (1).

Guarantees and capital protection

If there is any arrangement intended to result in a particular capital or income return from a holding of units in an authorised fund, or any investment objective of giving protection to the capital value of, or income return from, such a holding:

(1) that arrangement or protection must not be such as to cause the possibility of a conflict of interest as between:

(a) unitholders and the authorised fund manager or depositary; or

(b) unitholders intended and not intended to benefit from the arrangement; and
(2) Where, in accordance with any statement required by COLL 4.2.5R (27)(c)(iv) (Table: contents of the prospectus), action is required by the unitholders to obtain the benefit of any guarantee, the authorised fund manager must provide reasonable notice in writing to unitholders before such action is required.

Switching rights: umbrella schemes

(1) In accordance with section 235(4) of the Act (Collective investment schemes), the participants in a scheme which is an umbrella are entitled to exchange rights in one sub-fund for rights in another sub-fund of the umbrella.

(2) To satisfy (1), where any sub-fund in a scheme which is an umbrella has provisions in its prospectus limiting the issue of units in that sub-fund, the authorised fund manager should ensure that at least two sub-funds are able to issue units at any time. In the case of an umbrella consisting of a single sub-fund that limits the issue of units, where the ICVC or the manager of such an umbrella intends to offer additional sub-funds, it should ensure that unitholders will have the right to switch at all times between two or more sub-funds in that umbrella.
Chapter 4

Investor Relations
4.1 Introduction

Application

This chapter applies to:

(1) an authorised fund manager of an AUT or an ICVC;

(2) any other director of an ICVC;

(3) a depositary of an AUT or an ICVC; and

(4) an ICVC,

where such AUT or ICVC is a UCITS scheme or a non-UCITS retail scheme.

Purpose

This chapter helps in achieving the statutory objective of protecting consumers by ensuring consumers have access to up-to-date detailed information about an authorised fund particularly before buying units and thereafter an appropriate level of investor involvement exists by providing a framework for them to:

(1) participate in the decisions on key issues concerning the authorised fund;

and

(2) be sent regular and relevant information about the authorised fund.
4.2 Pre-sale notifications

Application

This section applies to an authorised fund manager, an ICVC and any other director of an ICVC

Publishing the prospectus

4.2.2 FCA

(1) A prospectus must be drawn up in English and published as a document by the authorised fund manager and, for an ICVC, it must be approved by the directors.

(2) The authorised fund manager must ensure that the prospectus:

   (a) contains the information required by COLL 4.2.5 R (Table: contents of the prospectus);

   (b) does not contain any provision which is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units;

   (c) does not contain any provision that conflicts with any rule in this sourcebook; and

   (d) is kept up-to-date and that revisions are made to it, whenever appropriate.

Provision and filing of the prospectus

4.2.3 FCA

(1) The authorised fund manager of an AUT or an ICVC must:

   (a) provide a copy of the scheme’s most recent prospectus drawn up and published in accordance with COLL 4.2.2 R (Publishing the prospectus) free of charge to any person on request; and

   (b) file a copy of the scheme’s original prospectus, together with all revisions thereto, with the FCA and, where a UCITS scheme is managed by an EEA UCITS management company, with that company’s Home State regulator on request.

(1A) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the prospectus may
be provided in a durable medium or by means of a website that meets the website conditions.

(2) [deleted]

(3) An authorised fund manager must, upon the request of a unitholder in a UCITS scheme that it manages, provide information supplementary to the prospectus of that scheme relating to:

(a) the quantitative limits applying to the risk management of that scheme;
(b) the methods used in relation to (a); and
(c) any recent development of the risk and yields of the main categories of investment.

[Note: articles 74, 75(1) and 75(2) of the UCITS Directive]

Provision and filing of the prospectus of a master UCITS

4.2.3A

(1) The authorised fund manager of a UCITS scheme that is a feeder UCITS must:

(a) where requested by an investor, provide a copy of the prospectus of its master UCITS free of charge; and
(b) file a copy of the prospectus of its master UCITS and any amendments thereto with the FCA.

(2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the prospectus of the master UCITS may be provided in a durable medium other than paper or by means of a website that meets the website conditions.

[Note: articles 63(3), 63(5), 75(1) and 75(2) of the UCITS Directive]

Feeder NURS: provision of the prospectus of the qualifying master scheme

4.2.3B

(1) The authorised fund manager of a feeder NURS must, where requested by an investor or the FCA, provide such person with a copy of the prospectus of its qualifying master scheme free of charge.

(2) Except where an investor requests a paper copy or the use of electronic communications is not appropriate, the prospectus of the qualifying master scheme may be provided in a durable medium other than paper, or by means of a website that meets the website conditions.
False or misleading prospectus

(1) The authorised fund manager:

(a) must ensure that the prospectus of the authorised fund does not contain any untrue or misleading statement or omit any matter required by the rules in this sourcebook to be included in it; and

(b) is liable to pay compensation to any person who has acquired any units in the authorised fund and suffered loss in respect of them as a result of such statement or omission; this is in addition to any liability incurred apart from under this rule.

(2) The authorised fund manager is not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if, at the time when the prospectus was made available to the public, it had taken reasonable care to determine that the statement was true and not misleading, or that the omission was appropriate, and that:

(a) it continued to take such reasonable care until the time of the relevant acquisition of units in the scheme; or

(b) the acquisition took place before it was reasonably practicable to bring a correction to the attention of potential purchasers; or

(c) it had already taken all reasonable steps to ensure that a correction was brought to the attention of potential purchasers; or

(d) the person who acquired the units was not materially influenced or affected by that statement or omission in making the decision to invest.

(3) The authorised fund manager is also not in breach of (1)(a) and is not liable to pay compensation under (1)(b) if:

(a) before the acquisition a correction had been published in a manner calculated to bring it to the attention of persons likely to acquire the units in question; or

(b) it took all reasonable steps to secure such publication and had reasonable grounds to conclude that publication had taken place before the units were acquired.

(4) The authorised fund manager is not liable to pay compensation under (1)(b) if the person who acquired the units knew at the time of the acquisition that the statement was untrue or misleading or knew of the omission.

(5) For the purposes of this rule a revised prospectus will be treated as a different prospectus from the original one.
(6) References in this rule to the acquisition of units include references to contracting to acquire them.

Table: contents of the prospectus

This table belongs to COLL 4.2.2 R (Publishing the prospectus).

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Authorised fund

2 A description of the authorised fund including:

(a) its name;
(b) whether it is an ICVC or an AUT;
(ba) whether it is a UCITS scheme or a non-UCITS retail scheme;
(bb) a statement that unitholders are not liable for the debts of the authorised fund.
(c) for an ICVC, the address of its head office and the address of the place in the United Kingdom for service on the ICVC of notices or other documents required or authorised to be served on it;
(d) the effective date of the authorisation order made by the FCA and relevant details of termination, if the duration of the authorised fund is limited;
(e) its base currency;
(f) for an ICVC, the maximum and minimum sizes of its capital;
(g) the circumstances in which it may be wound up under the rules and a summary of the procedure for, and the rights of unitholders under, such a winding up; and
(h) if it is not an umbrella, a statement that it is a feeder UCITS, a feeder NURS, or a fund of alternative investment funds, where that is the case.

Umbrella ICVCs

2A For an ICVC which is an umbrella, a statement that:

(a) its sub-funds are segregated portfolios of assets and, accordingly, the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose; and
(b) while the provisions of the OEIC Regulations provide for segregated liability between sub-funds, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under foreign law contracts, it is not yet known how those foreign courts will react to regulations 11A and 11B of the OEIC Regulations.

Umbrella Schemes

2B For a UCITS scheme or non-UCITS retail scheme which is an umbrella, a statement detailing whether each specific sub-fund is a feeder UCITS, a feeder NURS or a fund of alternative investment funds, as appropriate.

Investment objectives and policy

3 The following particulars of the investment objectives and policy of the authorised fund:

(a) the investment objectives, including its financial objectives;
(b) the authorised fund's investment policy for achieving those investment objectives, including the general nature of the portfolio and, if appropriate, any intended specialisation;
(c) an indication of any limitations on that investment policy;
(d) the description of assets which the capital property may consist of;
(e) the proportion of the capital property which may consist of an asset of any description;
(f) the description of transactions which may be effected on behalf of the authorised fund and an indication of any techniques and instruments or borrowing powers which may be used in the management of the authorised fund;
(g) a list of the eligible markets through which the authorised fund may invest or deal in accordance with COLL 5.2.10 R (2)(b) (Eligible markets: requirements);
(h) for an ICVC, a statement as to whether it is intended that the scheme will have an interest in any immovable property or movable property (in accordance with COLL 5.6.4 R (2) (Investment powers: general) or COLL 5.2.8 R (2) (UCITS schemes: general)) for the direct pursuit of the ICVC's business;
(i) where COLL 5.2.12 R (3) (Spread: government and public securities) applies, a prominent statement as to the fact that more than 35% of the scheme property is or may be invested in government and public securities and the names of the individual states, local authorities or public international bodies in whose securities the authorised fund may invest more than 35% of the scheme property;
(j) the policy in relation to the exercise of borrowing powers by the authorised fund;

(k) for an authorised fund which may invest in other schemes, the extent to which the scheme property may be invested in the units of schemes which are managed by the authorised fund manager or by its associate;

(ka) where a scheme is a feeder scheme (other than a feeder UCITS or a feeder NURS), which (in respect of investment in units in collective investment schemes) is dedicated to units in a single collective investment scheme, details of the master scheme and the minimum (and, if relevant, maximum) investment that the feeder scheme may make in it;

(l) where a scheme invests principally in scheme units, deposits or derivatives, or replicates an index in accordance with COLL 5.2.31 R or COLL 5.6.23 R (Schemes replicating an index), a prominent statement regarding this investment policy;

(m) where derivatives transactions may be used in a scheme, a prominent statement as to whether these transactions are for the purposes of efficient portfolio management (including hedging) or meeting the investment objectives or both and the possible outcome of the use of derivatives on the risk profile of the scheme;

(n) information concerning the profile of the typical investor for whom the scheme is designed;

(o) information concerning the historical performance of the scheme presented in accordance with COBS 4.6.2 R (the rules on past performance);

(p) for a non-UCITS retail scheme which invests in immovables, a statement of the countries or territories of situation of land or buildings in which the authorised fund may invest;

(q) for a UCITS scheme which invests a substantial portion of its assets in other schemes, a statement of the maximum level of management fees that may be charged to that UCITS scheme and to the schemes in which it invests;

(qa) where the authorised fund is a qualifying money market fund, short-term money market fund or money market fund, a statement identifying it as such a fund and a statement that the authorised fund's investment objectives and policies will meet the conditions specified in the definition of qualifying money market fund, short-term money market fund or money market fund, as appropriate;
(r) where the net asset value of a UCITS scheme is likely to have high volatility owing to its portfolio composition or the portfolio management techniques that may be used, a prominent statement to that effect;

(s) for a UCITS scheme, a statement that any unitholder may obtain on request the types of information (which must be listed) referred to in COLL 4.2.3R (3) (Availability of prospectus and long report); and

(t) for a UCITS scheme that is or is intended to be a master UCITS, a statement that it is not a feeder UCITS and will not hold units of a feeder UCITS.

Reporting, distributions and accounting dates

4 Relevant details of the reporting, accounting and distribution information which includes:

(a) the accounting and distribution dates;

(b) procedures for:
   (i) determining and applying income (including how any distributable income is paid);
   (ii) unclaimed distributions; and
   (iii) if relevant, calculating, paying and accounting for income equalisation;

(c) the accounting reference date and when the long report will be published in accordance with COLL 4.5.14 R (Publication and availability of annual and half-yearly long report); and

(d) when the short report will be sent to unitholders in accordance with COLL 4.5.13 R (Provision of short report).

Characteristics of the units

5 Information as to:

(a) where there is more than one class of unit in issue or available for issue, the name of each such class and the rights attached to each class in so far as they vary from the rights attached to other classes;

(b) where the instrument constituting the scheme provides for the issue of bearer certificates, that fact and what procedures will operate for them;

(c) how unitholders may exercise their voting rights and what these amount to;

(d) where a mandatory redemption, cancellation or conversion of units from one class to another may be required, in what circumstances it may be required; and

(e) for an AUT, the fact that the nature of the right represented by units is that of a beneficial interest under a trust.
Authorised fund manager

6 The following particulars of the **authorised fund manager**:

(a) its name;
(b) the nature of its corporate form;
(c) the date of its incorporation;
(d) the address of its registered office;
(e) the address of its head office, if that is different from the address of its registered office;
(f) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*;
(g) if the duration of its corporate status is limited, when that status will or may cease; and
(h) the amount of its issued share capital and how much of it is paid up.

Directors of an ICVC, other than the ACD

7 Other than for the **ACD**:

(a) the names and positions in the *ICVC* of any other *directors* (if any); and
(b) the manner, amount and calculation of the *remuneration* of such *directors*.

Depositary

8 The following particulars of the **depositary**:

(a) its name;
(b) the nature of its corporate form;
(c) the address of its registered office;
(d) the address of its head office, if that is different from the address of its registered office;
(e) if neither its registered office nor its head office is in the *United Kingdom*, the address of its principal place of business in the *United Kingdom*; and
(f) a description of its principal business activity.

Investment adviser

9 If an **investment adviser** is retained in connection with the business of an **authorised fund**:

(a) its name; and
(b) where it carries on a significant activity other than providing services to the *authorised fund* as an *investment adviser*, what that significant activity is.
The name of the auditor of the authorised fund.

The following relevant details:

(a) for an ICVC:

(i) a summary of the material provisions of the contract between the ICVC and the ACD which may be relevant to unitholders including provisions (if any) relating to remuneration, termination, compensation on termination and indemnity;

(ii) the main business activities of each of the directors (other than those connected with the business of the ICVC) where these are of significance to the ICVC's business;

(iii) if any director is a body corporate in a group of which any other corporate director of the ICVC is a member, a statement of that fact;

(iv) the main terms of each contract of service between the ICVC and a director in summary form; and

(v) for an ICVC that does not hold annual general meetings, a statement that copies of contracts of service between the ICVC and its directors, including the ACD, will be provided to a unitholder on request;

(b) the names of the directors of the authorised fund manager and the main business activities of each of the directors (other than those connected with the business of the authorised fund) where these are of significance to the authorised fund's business;

(c) a summary of the material provisions of the contract between the ICVC or the manager of the AUT and the depositary which may be relevant to unitholders, including provisions relating to the remuneration of the depositary;

(d) if an investment adviser retained in connection with the business of the authorised fund is a body corporate in a group of which any director of the ICVC or the manager of the AUT is a member, that fact;

(e) a summary of the material provisions of any contract between the authorised fund manager or the ICVC and any investment adviser which may be relevant to unitholders;

(f) if an investment adviser retained in connection with the business of the authorised fund has the authority of the authorised fund manager or the ICVC to make decisions on
behalf of the authorised fund manager or the ICVC, that fact and a description of the matters in relation to which it has that authority;

(g) a list of:

(i) the functions which the authorised fund manager has delegated in accordance with FCA rules or, for an EEA UCITS management company, in accordance with applicable Home State measures implementing article 13 of the UCITS Directive; and

(ii) the person to whom such functions have been delegated; and

(h) in what capacity (if any), the authorised fund manager acts in relation to any other regulated collective investment schemes and the name of such schemes.

Register of unitholders

12 Details of:

(a) the address in the United Kingdom where the register of unitholders, and where relevant the plan register is kept and can be inspected by unitholders; and

(b) the registrar's name and address.

Payments out of scheme property

13 In relation to each type of payment from the scheme property, details of:

(a) who the payment is made to;

(b) what the payment is for;

(c) the rate or amount where available;

(d) how it will be calculated and accrued;

(e) when it will be paid; and

(f) where a performance fee is taken, examples of its operation in plain English and the maximum it can amount to.

Allocation of payments

14 If, in accordance with COLL 6.7.10 R (Allocation of payments to income or capital), the authorised fund manager and the depositary have agreed that all or part of any income expense payments may be treated as a capital expense:

(a) that fact;

(b) the policy for allocation of these payments; and

(c) a statement that this policy may result in capital erosion or constrain capital growth.
Moveable and immovable property (ICVC only)

An estimate of any expenses likely to be incurred by the ICVC in respect of movable and immovable property in which the ICVC has an interest.

Valuation and pricing of scheme property

In relation to the valuation of scheme property and pricing of units:

(a) either:
   (i) in the case of a single-priced authorised fund, a provision that there must be only a single price for any unit as determined from time to time by reference to a particular valuation point; or
   (ii) in the case of a dual-priced authorised fund, the authorised fund manager’s policy for determining prices for the sale and redemption of units by reference to a particular valuation point and an explanation of how those prices may differ;

(b) details of:
   (i) how the value of the scheme property is to be determined in relation to each purpose for which the scheme property must be valued;
   (ii) how frequently and at what time or times of the day the scheme property will be regularly valued for dealing purposes and a description of any circumstance in which the scheme property may be specially valued;
   (iii) where relevant, how the price of units of each class will be determined for dealing purposes;
   (iv) where and at what frequency the most recent prices will be published; and
   (v) where relevant in the case of a dual-priced authorised fund, the authorised fund manager’s policy in relation to large deals; and

(c) if provisions in (a) and (b) do not take effect when the instrument constituting the scheme or (where appropriate) supplemental trust deed takes effect, a statement of the time from which those provisions are to take effect or how it will be determined.

Dealing

The following particulars:

(a) the procedures, the dealing periods and the circumstances in which the authorised fund manager will effect:
(i) the sale and redemption of units and the settlement of transactions (including the minimum number or value of units which one person may hold or which may be subject to any transaction of sale or redemption) for each class of unit in the authorised fund; and

(ii) any direct issue or cancellation of units by an ICVC or by the trustee (as appropriate) through the authorised fund manager in accordance with COLL 6.2.7 (2) (Issue and cancellation of units through an authorised fund manager);

(b) the circumstances in which the redemption of units may be suspended;

(c) whether certificates will be issued in respect of registered units;

(d) the circumstances in which the authorised fund manager may arrange for, and the procedure for the issue or cancellation of units in specie;

(e) the investment exchanges (if any) on which units in the scheme are listed or dealt;

(f) the circumstances and conditions for issuing units in an authorised fund which limit the issue of any class of units in accordance with COLL 6.2.18 R (Limited issue);

(g) the circumstances and procedures for the limitation or deferral of redemptions in accordance with COLL 6.2.19 R (Limited redemption) or COLL 6.2.21 R (Deferred redemption);

(h) in a prospectus available during the period of any initial offer:

(i) the length of the initial offer period;

(ii) the initial price of a unit, which must be in the base currency;

(iii) the arrangements for issuing units during the initial offer, including the authorised fund manager’s intentions on investing the subscriptions received during the initial offer;

(iv) the circumstances when the initial offer will end;

(v) whether units will be sold or issued in any other currency; and

(vi) any other relevant details of the initial offer; and

(i) whether a unitholder may effect transfer of title to units on the authority of an electronic communication and if so
the conditions that must be satisfied in order to effect a transfer.

**Dilution**

18 In the case of a single-priced authorised fund, details of what is meant by dilution including:

(a) a statement explaining:

(i) that it is not possible to predict accurately whether dilution is likely to occur; and

(ii) which of the policies the authorised fund manager is adopting under COLL 6.3.8 (1) (Dilution) together with an explanation of how this policy may affect the future growth of the authorised fund; and

(b) if the authorised fund manager may require a dilution levy or make a dilution adjustment, a statement of:

(i) the authorised fund manager's policy in deciding when to require a dilution levy, including the authorised fund manager's policy on large deals, or when to make a dilution adjustment;

(ii) the estimated rate or amount of any dilution levy or dilution adjustment based either on historical data or future projections; and

(iii) the likelihood that the authorised fund manager may require a dilution levy or make a dilution adjustment and the basis (historical or projected) on which the statement is made.

**SDRT provision**

19 An explanation of:

(a) what is meant by stamp duty reserve tax, SDRT provision and large deals; and

(b) the authorised fund manager's policy on imposing an SDRT provision including its policy on large deals, and the occasions, and the likely frequency of the occasions, in which an SDRT provision may be imposed and the maximum rate of it (a usual rate may also be stated).

**Forward and historic pricing**

20 The authorised fund manager's normal basis of pricing under COLL 6.3.7 (Forward and historic pricing).

**Preliminary charge**

21 Where relevant, a statement authorising the authorised fund manager to make a preliminary charge and specifying the basis for and current amount or rate of that charge.
Where relevant, a statement authorising the *authorised fund manager* to deduct a *redemption charge* out of the proceeds of *redemption*; and if the *authorised fund manager* makes a *redemption charge*:

(a) the current amount of that charge or if it is variable, the rate or method of calculating it;

(b) if the amount, rate or method has been changed, that details of any previous amount, rate or method may be obtained from the *authorised fund manager* on request; and

(c) how the order in which *units* acquired at different times by a *unitholder* is to be determined so far as necessary for the purposes of the imposition of the *redemption charge*.

**Property Authorised Investment Funds**

For a *property authorised investment fund*, a statement that:

(1) it is a *property authorised investment fund*;

(2) no *body corporate* may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and

(3) in the event that the *authorised fund manager* reasonably considers that a *body corporate* holds more than 10% of the net asset value of the fund, the *authorised fund manager* is entitled to delay any redemption or cancellation of *units* if the *authorised fund manager* reasonably considers such action to be:

(a) necessary in order to enable an orderly reduction of the holding to below 10%; and

(b) in the interests of the *unitholders* as a whole.

**General information**

Details of:

(a) the address at which copies of the *instrument constituting the scheme*, any amending instrument and the most recent annual and half-yearly long reports may be inspected and from which copies may be obtained;

(b) the manner in which any notice or *document* will be served on *unitholders*;

(c) the extent to which and the circumstances in which:

(i) the *scheme* is liable to pay or suffer tax on any appreciation in the value of the *scheme property* or on the income derived from the *scheme property*; and
(ii) deductions by way of withholding tax may be made from distributions of income to unitholders and payments made to unitholders on the redemption of units;

(d) for a UCITS scheme, any possible fees or expenses not described in paragraphs 13 to 22, distinguishing between those to be paid by a unitholder and those to be paid out of scheme property; and

(e) for an ICVC, whether or not annual general meetings will be held.

Information on the umbrella

24 In the case of a scheme which is an umbrella with two or more sub-funds, the following information:

(a) that a unitholder is entitled to exchange units in one sub-fund for units in any other sub-fund (other than a sub-fund which has limited the issue of units);

(b) that an exchange of units in one sub-fund for units in any other sub-fund is treated as a redemption and sale and will, for persons subject to United Kingdom taxation, be a realisation for the purposes of capital gains taxation;

(c) that in no circumstances will a unitholder who exchanges units in one sub-fund for units in any other sub-fund be given a right by law to withdraw from or cancel the transaction;

(d) the policy for allocating between sub-funds any assets of, or costs, charges and expenses payable out of, the scheme property which are not attributable to any particular sub-fund;

(e) what charges, if any, may be made on exchanging units in one sub-fund for units in any other sub-fund; and

(f) for each sub-fund, the currency in which the scheme property allocated to it will be valued and the price of units calculated and payments made, if this currency is not the base currency of the scheme which is an umbrella.

(g) [deleted]

Application of the prospectus contents to an umbrella

25 For a scheme which is an umbrella, information required must be stated:

(a) in relation to each sub-fund where the information for any sub-fund differs from that for any other; and

(b) for the umbrella as a whole, but only where the information is relevant to the umbrella as a whole.

Information on a feeder UCITS
25A In the case of a feeder UCITS, the following information:

(a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests at least 85% in value of the scheme property in units of that master UCITS;

(b) the investment objective and policy, including the risk profile; and whether the performance records of the feeder UCITS and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of how the balance of the scheme property which is not invested in units of the master UCITS is invested in accordance with COLL 5.8.3 R (Balance of scheme property: investment restrictions on a feeder UCITS);

(c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;

(d) a summary of the master-feeder agreement or where applicable, the internal conduct of business rules referred to in COLL 11.3.2 R (2) (Master-feeder agreement and internal conduct of business rules);

(e) how the unitholders may obtain further information on the master UCITS and the master-feeder agreement;

(f) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as the aggregate charges of the feeder UCITS and the master UCITS; and

(g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

[Note: article 63(1) of the UCITS Directive]

Information on a feeder NURS

25B In the case of a feeder NURS, the following information:

(a) a declaration that the feeder NURS is a feeder of a particular qualifying master scheme and as such is dedicated to units in a single qualifying master scheme and the minimum (and, if relevant, maximum) investment that the feeder NURS may make in its qualifying master scheme;

(b) the investment objective and policy of the feeder NURS, including its risk profile; and whether the performance records of the feeder NURS and the qualifying master scheme are identical, or to what extent and for which reasons they differ, including a description of how the balance of the scheme property which is not invested in
units of the qualifying master scheme is invested in accordance with COLL 5.6.7 R (6A) (Spread: general);

(c) a brief description of the qualifying master scheme, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the qualifying master scheme may be obtained;

(d) how the unitholders may obtain further information on the qualifying master scheme;

(e) a description of all remuneration or reimbursement of costs payable by the feeder NURS by virtue of its investment in units of the qualifying master scheme, as well as the aggregate charges of the feeder NURS and the qualifying master scheme; and

(f) a description of the tax implications of the investment into the qualifying master scheme for the feeder NURS.

Marketing in another EEA state

26 A prospectus of a UCITS scheme which is prepared for the purpose of marketing units in a EEA State other than the United Kingdom, must give details as to:

(a) what special arrangements have been made:

(i) for paying in that EEA State amounts distributable to unitholders resident in that EEA State;

(ii) for redeeming in that EEA State the units of unitholders resident in that EEA State;

(iii) for inspecting and obtaining copies in that EEA State of the instrument constituting the scheme and amendments to it, the prospectus and the annual and half-yearly long report; and

(iv) for making public the price of units of each class; and

(b) how the ICVC or the manager of an AUT will publish in that EEA State notice:

(i) that the annual and half-yearly long report are available for inspection;

(ii) that a distribution has been declared;

(iii) of the calling of a meeting of unitholders; and

(iv) of the termination of the authorised fund or the revocation of its authorisation.

Investment in overseas property through an intermediate holding vehicle

26A If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding ve-
hicles, a statement disclosing the existence of that intermediate holding vehicle or series of intermediate holding vehicles and confirming that the purpose of that intermediate holding vehicle or series of intermediate holding vehicle is to enable the holding of overseas immovables by the scheme.

Additional information

27 Any other material information which is within the knowledge of the directors of an ICVC or the manager of an AUT, or which the directors or manager would have obtained by making reasonable enquiries, including but not confined to, the following matters:

(a) information which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the authorised fund and the extent and characteristics of the risks accepted by so participating;

(b) a clear and easily understandable explanation of any risks which investment in the authorised fund may reasonably be regarded as presenting for reasonably prudent investors of moderate means;

(c) if there is any arrangement intended to result in a particular capital or income return from a holding of units in the authorised fund or any investment objective of giving protection to the capital value of, or income return from, such a holding:

   (i) details of that arrangement or protection;

   (ii) for any related guarantee, sufficient details about the guarantor and the guarantee to enable a fair assessment of the value of the guarantee;

   (iii) a description of the risks that could affect achievement of that return or protection; and

   (iv) details of the arrangements by which the authorised fund manager will notify unitholders of any action required by the unitholders to obtain the benefit of the guarantee; and

(d) whether any notice has been given to unitholders of the authorised fund manager intention to propose a change to the scheme and if so, its particulars.

Guidance on contents of the prospectus

In relation to COLL 4.2.5R (3)(b) the prospectus might include:

(a) a description of the extent (if any) to which that policy does not envisage the authorised fund remaining fully invested at all times;
(b) for a non-UCITS retail scheme which may invest in immovable property:

(i) the maximum extent to which the scheme property may be invested in immovables; and

(ii) a statement of the policy of the authorised fund manager in relation to insurance of immovables forming part of the scheme property; and

(c) a description of any restrictions in the assets in which investment may be made, including restrictions in the extent to which the authorised fund may invest in any category of asset, indicating (if appropriate) where the restrictions are more onerous than those imposed by COLL 5 (Investment and borrowing powers).

(2) In relation to COLL 4.2.5R (13), the type of payments are likely to include management fees (such as periodic and performance fees), depositary fees, custodian fees, transaction fees, registrar fees, audit fees and FCA fees. Expenses which represent properly incurred costs of the scheme may also be treated as a type of payment for this purpose.

(3) In relation to COLL 4.2.5R (27), the prospectus might include a statement of the authorised fund manager’s policy in relation to holding units in the scheme as principal, and in particular whether it seeks to make a profit from doing so. It might also include a prominent statement of non-accountability referred to in COLL 6.7.16G (Exemptions from liability to account for profits).

(4) In relation to COLL 4.2.5 R (16)(a), where the prospectus includes provisions for both a single-priced authorised fund and a dual-priced authorised fund, it should state prominently which method of pricing is applicable to which authorised fund, and explain how the differences between them may affect unitholders (for example if a unitholder exchanges units in a single-priced authorised fund for units in a dual-priced authorised fund, or vice versa).

(5) Additional matters which are not contained in COLL 4.2.5 R may be required to be included in the prospectus, for example for the purposes of making the scheme eligible under relevant tax legislation.
4.3 Approvals and notifications

Application

This section applies to an authorised fund manager.

Explanation

4.3.1 FCA

This section applies to an authorised fund manager.

4.3.2 FCA

(1) The diagram in COLL 4.3.3 G explains how an authorised fund manager should treat changes it is proposing to a scheme and provides an overview of the rules and guidance in this section.

(2) Regulation 21 of the OEIC Regulations (The Authority's approval for certain changes in respect of a company) and section 251 of the Act (Alteration of schemes and changes of manager or trustee) require the prior approval of the FCA for certain proposed changes to an authorised fund, including a change of the authorised fund manager or depositary or a change to the instrument constituting the scheme. This should be kept in mind when considering any proposed change.

Diagram: Change event

4.3.3 FCA

This diagram belongs to COLL 4.3.2 G.

4.3.4 FCA

(1) The authorised fund manager, must, by way of an extraordinary resolution, obtain prior approval from the
unitholders for any proposed change to the scheme which, in accordance with (2), is a fundamental change.

(2) A fundamental change is a change or event which:
   (a) changes the purposes or nature of the scheme; or
   (b) may materially prejudice a unitholder; or
   (c) alters the risk profile of the scheme; or
   (d) introduces any new type of payment out of scheme property.

Guidance on fundamental changes

(1) Any change may be fundamental depending on its degree of materiality and effect on the scheme and its unitholders. Consequently an authorised fund manager will need to determine whether in each case a particular change is fundamental in nature or not.

(2) For the purpose of ■ COLL 4.3.4 R (2)(a) to ■ COLL 4.3.4 R (2)(c) a fundamental change to a scheme is likely to include:
   (a) any proposal for a scheme of arrangement referred to in ■ COLL 7.6.2 R (Schemes of arrangement: requirements);
   (b) a change in the investment policy to achieve capital growth from investment in one country rather than another;
   (c) a change in the investment objective or policy to achieve capital growth through investment in fixed interest rather than equity investments;
   (d) a change in the investment policy to allow the authorised fund to invest in derivatives as an investment strategy which increases its volatility;
   (e) a change to the characteristics of a scheme to distribute income annually rather than monthly; or
   (f) the introduction of limited redemption arrangements.

Significant change requiring pre-event notification

(1) The authorised fund manager must give prior written notice to unitholders, in respect of any proposed change to the operation of a scheme that, in accordance with (2), constitutes a significant change.

(2) A significant change is a change or event which is not fundamental in accordance with ■ COLL 4.3.4 R but which:
   (a) affects a unitholder's ability to exercise his rights in relation to his investment; or
   (b) would reasonably be expected to cause the unitholder to reconsider his participation in the scheme; or
(c) results in any increased payments out of the scheme property to an authorised fund manager or any other director of an ICVC or an associate of either; or

(d) materially increases other types of payment out of scheme property.

(3) The notice period in (1) must be of a reasonable length (and must not be less than 60 days).

Appointment of a new ACD or manager

(1) In the case of a UCITS scheme, the appointment of a new ACD of an ICVC under COLL 6.5.3 R (Appointment of an ACD) or the replacement of the manager of an AUT who proposes to retire under COLL 6.5.8 R (Retirement of a manager of an AUT) must, if in either case the new authorised fund manager is established in a different EEA State to the outgoing authorised fund manager, be treated as a significant change in accordance with COLL 4.3.6 R.

(2) Paragraph (1) does not apply:

(a) if the appointment of the new authorised fund manager is the subject of an extraordinary resolution approved by a meeting of unitholders; or

(b) following the termination of the appointment of the ACD of an ICVC under COLL 6.5.4 R (2) or COLL 6.5.4 R (3) (Termination of appointment of an ACD), if the directors of the ICVC other than the ACD, or the depositary if there are no such directors, consider that it would be in the best interests of unitholders to appoint a new ACD without delay.

Guidance on significant changes

(1) Changes may be significant depending in each case on their degree of materiality and effect on the scheme and its unitholders. Consequently the authorised fund manager will need to determine whether in each case a particular change is significant in nature or not.

(2) For the purpose of COLL 4.3.6 R a significant change is likely to include:

(a) a change in the method of price publication;

(b) a change in any operational policy such as dilution policy or allocation of payments policy;

(c) an increase in the preliminary charge where units are purchased through a group savings plan; or

(d) a change in the pricing arrangements for units of the scheme so as to cause a single-priced authorised fund to become a dual-priced authorised fund, or vice versa.
(3) Where the directors of an ICVC elect to discontinue holding annual general meetings under paragraph 37A of the OEIC Regulations, they are required to give 60 days' written notice to shareholders. For the purpose of COLL 4.3.6 R this should be treated as a significant change to the operation of the scheme.

(4) The requirement in COLL 4.3.6A R (1) applies in all cases where the outgoing authorised fund manager (whether established in the United Kingdom or in another EEA State) is to be replaced by an authorised fund manager established in any other EEA State (including the United Kingdom).

**Notifiable changes**

(1) The authorised fund manager must inform unitholders in an appropriate manner and timescale of any notifiable changes that are reasonably likely to affect, or have affected, the operation of the scheme.

(2) A notifiable change is a change or event, other than a fundamental change under COLL 4.3.4 R or a significant change under COLL 4.3.6 R, which a unitholder must be made aware of unless the authorised fund manager concludes that the change is insignificant.

**Guidance on notifiable changes**

(1) The circumstances causing a notifiable change may or may not be within the control of the authorised fund manager.

(2) For the purpose of COLL 4.3.8 R (Notifiable changes) a notifiable change might include:

(a) a change of named investment manager where the authorised fund has been marketed on the basis of that individual's involvement;
(b) a significant political event which impacts on the authorised fund or its operation;
(c) a change to the time of the valuation point;
(d) the introduction of limited issue arrangements; or
(e) a change of the depositary or a change in the name of the authorised fund.

(3) The appropriate manner and timescale of notification would depend on the nature of the change or event. Consequently the authorised fund manager will need to assess each change or event individually.

(4) An appropriate manner of notification could include:

(a) sending an immediate notification to the unitholder;
(b) publishing the information on a website; or
(c) the information being included in the next long report of the scheme.
Appointment of an AFM without prior written notice to unitholders

(1) In the case of a UCITS scheme, the appointment of a new authorised fund manager as a result of:

(a) in the case of an ICVC, the termination of the appointment of the previous ACD under COLL 6.5.4 R (2) or COLL 6.5.4 R (3) (Termination of appointment of an ACD); or

(b) in the case of an AUT, the replacement of the manager under COLL 6.5.7 R (2) (Replacement of a manager);

must, if the new authorised fund manager is established in a different EEA State to the outgoing authorised fund manager, be notified to unitholders.

(2) The new authorised fund manager must immediately notify unitholders of its appointment under (1) in an appropriate manner.

Change events relating to feeder UCITS and feeder NURS

Where the authorised fund manager of either a feeder UCITS or a feeder NURS is notified of any change in respect of its master UCITS or qualifying master scheme which has the effect of a change to the feeder UCITS or feeder NURS, the authorised fund manager must:

(1) classify it as a fundamental change, significant change or a notifiable change to the feeder UCITS or feeder NURS in accordance with the rules in this section; and

(2) (a) for a fundamental change, obtain approval from the unitholders by way of an extraordinary resolution; or

(b) for a significant change, give written notice to unitholders of that change; or

(c) for a notifiable change, comply with COLL 4.3.8 R (Notifiable changes).

The actions required by COLL 4.3.11 R (2)(a) and (b) must be carried out as soon as reasonably practicable after the authorised fund manager of the feeder UCITS or feeder NURS has been informed of the relevant change to the master UCITS or qualifying master scheme.

(1) The authorised fund manager of the feeder UCITS or feeder NURS should assess the change to the master UCITS or qualifying master scheme in terms of its impact on the feeder UCITS or feeder NURS. For example, a change to the investment objective and policy of the master UCITS or qualifying master scheme that alters its risk profile would constitute a fundamental change for the feeder UCITS or feeder NURS. In order for the feeder UCITS or feeder NURS to continue investing in the master UCITS or qualifying master scheme, the authorised fund manager of the feeder UCITS or feeder...
NURS should obtain the approval of unitholders by way of an extraordinary resolution, or else make a proposal to invest in a different master UCITS or qualifying master scheme. For a feeder UCITS this should be done in accordance with COLL 11.2.2 R (Application for approval of an investment in a master UCITS).

(2) Not all changes affecting the master UCITS or qualifying master scheme will have the same significance for the feeder UCITS or feeder NURS and its unitholders. For example, a change to how the prices of the units in the master UCITS or qualifying master scheme are published might not be a significant change for the feeder UCITS or feeder NURS if the prices of its own units continue to be published in the same way.

(3) Where the authorised fund manager of the feeder UCITS or feeder NURS receives insufficient notice of the intended change to the master UCITS or qualifying master scheme to be able to seek the prior approval of unitholders to any fundamental change or to inform them at least 60 days in advance of any significant change, it should nevertheless use reasonable endeavours to inform them of the change as soon as possible so that they can make an informed judgement about the merits of continuing to invest in the feeder UCITS or feeder NURS.
4.4 Meetings of unitholders and service of notices

Application

This section applies to an authorised fund manager, a depositary and any other director of an ICVC.

General meetings

1) The authorised fund manager, the depositary or the other directors of an ICVC may convene a general meeting of unitholders at any time.

2) The unitholders may request the convening of a general meeting by a requisition which must:
   a) state the objects of the meeting;
   b) be dated;
   c) be signed by unitholders who, at that date, are registered as the unitholders of units representing not less than one-tenth in value (or such lower proportion stated in the instrument constituting the scheme) of all of the units then in issue; and
   d) be deposited at the head office of the ICVC or with the trustee.

3) The authorised fund manager, the depositary or the other directors of an ICVC must on receipt of a requisition that complies with (2), immediately convene a general meeting of the authorised fund for a date no later than eight weeks after receipt of the requisition.

Class meetings

This section applies, unless the context otherwise requires, to class meetings by reference to the units of the class concerned and the unitholders and prices of such units.
4.4.4 Special meaning of unitholder in COLL 4.4

(1) Unless a unit in the authorised fund is a participating security, in this section "unitholders" means unitholders as at a cut-off date selected by the authorised fund manager which is a reasonable time before notices of the relevant meeting are sent out.

(2) If any unit in the authorised fund is a participating security, a registered unitholder of such a unit is entitled to receive a notice of a meeting or a notice of an adjourned meeting under COLL 4.4.5 R (Notice of general meetings), if entered on the register at the close of business on a day to be determined by the authorised fund manager, which must not be more than 21 days before the notices of the meeting are sent out.

(3) For the purposes of (2), in COLL 4.4.6 R (Quorum) to COLL 4.4.11 R (Chairman, adjournments and minutes) "unitholders" in relation to those units means:

(a) the persons entered on the register at a time to be determined by the authorised fund manager and stated in the notice of the meeting, which must not be more than 48 hours before the time fixed for the meeting; or

(b) in the case of bearer units, unitholders of bearer units which were in issue at the time applicable under (a).

4.4.5 Notice of general meetings

(1) Where the authorised fund manager, the depositary or the other directors of an ICVC decide to convene a general meeting of unitholders:

(a) each unitholder must be given at least 14 days written notice, inclusive of the date on which the notice is first served and the day of the meeting; and

(b) the notice must specify the place, day and hour of the meeting and the terms of the resolutions to be proposed and a copy of the notice must be sent to the depositary.

(2) The accidental omission to give notice to, or the non-receipt of notice by, any unitholder does not invalidate the proceedings at any meeting.

(3) Notice of an adjourned meeting of unitholders must be given to each unitholder, stating that while two unitholders present in person or proxy are required to constitute a quorum at the adjourned meeting, this may be reduced to one in accordance with COLL 4.4.6 R (3), should two such unitholders not be present after a reasonable time of convening of the meeting.
(4) Paragraph (1)(a) does not apply to the notice of an adjourned meeting.

Quorum

(1) The quorum required to conduct business at a meeting of unitholders is two unitholders, present in person or by proxy.

(2) If after a reasonable time from the time for the start of the meeting, a quorum is not present, the meeting:

(a) if convened on the requisition of unitholders, must be dissolved; and

(b) in any other case, must stand adjourned to:

(i) a day and time which is seven or more days after the day and time of the meeting; and

(ii) a place to be appointed by the chairman.

(3) If, at an adjourned meeting under (2)(b), a quorum is not present after a reasonable time from the time for the meeting, one person entitled to be counted in a quorum present at the meeting shall constitute a quorum.

Resolutions

(1) Except where an extraordinary resolution is specifically required or permitted, any resolution of unitholders is passed by a simple majority of the votes validly cast at a general meeting of unitholders.

(2) In the case of an equality of, or an absence of, votes cast, the chairman is entitled to a casting vote.

(3) Where a resolution (including an extraordinary resolution) is required to conduct business at a meeting of unitholders and every unitholder is prohibited under COLL 4.4.8 R (4) from voting, it shall not be necessary to convene such a meeting and a resolution may, with the prior written agreement of the depositary to the process, instead be passed with the written consent of unitholders representing 50% or more, or for an extraordinary resolution 75% or more, of the units of the scheme in issue.

Voting rights

(1) On a show of hands every unitholder who is present in person has one vote.

(2) On a poll:
(a) votes may be given either personally or by proxy or in another manner permitted by the *instrument constituting the scheme*;

(b) the voting rights for each *unit* must be the proportion of the voting rights attached to all of the *units in issue* that the *price* of the *unit* bears to the aggregate *price or prices* of all of the *units in issue*:

   (i) if any *unit* is a *participating security*, at the time determined under ■ COLL 4.4.4 R (2) (Special meaning of unitholder in ■ COLL 4.4);

   (ii) otherwise at the date specified in ■ COLL 4.4.4 R (1); and

(c) a *unitholder* need not use all his votes or cast all his votes in the same way.

(3) For joint *unitholders*, the vote of the most senior who votes, whether in person or by proxy, must be accepted to the exclusion of the votes of the other joint *unitholders*. For this purpose seniority must be determined by the order in which the names stand in the *register of unitholders*.

(4) No *director* of the ICVC or the *manager* can be counted in the quorum of, and no such *director* or the *manager* nor any of their *associates* may vote at, any meeting of the *authorised fund*.

(5) The prohibition in (4) does not apply to any *units* held on behalf of, or jointly with, a *person* who, if himself the registered *unitholder*, would be entitled to vote and from whom the *director*, the *manager* or its *associate* have received voting instructions.

(6) For the purpose of this section, *units* held, or treated as held, by the *authorised fund manager* or any other *director* of the ICVC, must not, except as mentioned in (5), be regarded as being in *issue*.

### Right to demand a poll

(1) A resolution put to the vote of a general meeting must be determined on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

   (a) the chairman;

   (b) at least two *unitholders*; or

   (c) the *depositary*.

(2) Unless a poll is demanded in accordance with (1), a declaration by the chairman as to the result of a resolution is conclusive evidence of the fact.
4.4.10 Proxies

(1) A unitholder may appoint another person to attend a general meeting and vote in his place.

(2) Unless the instrument constituting the scheme provides otherwise, a unitholder may appoint more than one proxy to attend on the same occasion but a proxy may vote only on a poll.

(3) Every notice calling a meeting of a scheme must contain a reasonably prominent statement that a unitholder entitled to attend and vote may appoint a proxy.

(4) For the appointment to be effective, any document relating to the appointment of a proxy must not be required to be received by the ICVC or any other person more than 48 hours before the meeting or adjourned meeting.

4.4.11 Chairman, adjournment and minutes

(1) A meeting of unitholders must have a chairman, nominated:

(a) in the case of an AUT, by the trustee;

(b) in the case of an ICVC, by a director other than the ACD or an associate of the ACD or, if no such nomination is made, by the depositary.

(2) If the chairman is not present after a reasonable time from the time for the meeting, the unitholders present must choose one of them to be chairman.

(3) The chairman:

(a) may, with the consent of any meeting of unitholders at which a quorum is present; and

(b) must, if so directed by the meeting;

adjourn the meeting from time to time and from place to place.

(4) Business must not be transacted at any adjourned meeting, except business which might have lawfully been transacted at the original meeting.

(5) The authorised fund manager must ensure that:

(a) minutes of all resolutions and proceedings at every meeting of unitholders are made and kept; and
(b) any minute made in (a) is signed by the chairman of the meeting of unitholders.

(6) Any minute referred to in (5)(b) is conclusive evidence of the matters stated in it.

**Notices to unitholders**

4.4.12 FCA

(1) Where this sourcebook requires any notice or document to be served upon a unitholder, it is duly served:

(a) for units held by a registered unitholder, if it is:
   (i) sent by post to or left at the unitholder’s address as appearing in the register; or
   (ii) sent by using an electronic medium in accordance with COLL 4.4.13 R (Other notices); or

(b) for units represented by bearer certificates, if given in the manner provided for in the prospectus.

(2) Any notice or document served by post is deemed to have been served on the second business day following the day on which it is posted.

(3) Any document left at a registered address or delivered other than by post is deemed to have been served on that day.

**Other notices**

4.4.13 FCA

(1) Any document or notice to be served on or information to be given to, any person, including the FCA, must be in legible form.

(2) For the purposes of this rule, any form is legible form which:

(a) is consistent with the ICVC’s, the directors’, the authorised fund manager’s or the depositary’s knowledge of how the recipient of the document wishes or expects to receive the document;

(b) is capable of being provided in hard copy by the authorised fund manager, the depositary or any other director of the ICVC;

(c) enables the recipient to know or record the time of receipt; and

(d) is reasonable in the context.

(3) (a) In this sourcebook, any requirement that a document be signed may be satisfied by an electronic signature or electronic evidence of assent.
(b) In relation to an AUT, where transfer of title to units is to be effected on the authority of an electronic communication, the manager must take reasonable steps to ensure that any electronic communication purporting to be made by the unitholder or his agent is in fact made by that person.

References to writing and electronic documents

In this sourcebook references to writing and the use of electronic media should be construed in accordance with GEN 2.2.14 R (References to writing) and its related guidance provisions.

Service of notice Regulations

The provisions in this section relating to the service and delivery of notices and documents both to unitholders and to the FCA, disapply the provisions of The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) under the power in Regulation 1(6) of those Regulations.
4.5 Reports and accounts

Application

The rules and guidance in this section apply to an authorised fund manager, a depositary and any other director of an ICVC.

Explanation

In order to provide the unitholders with regular and relevant information about the progress of the authorised fund, the authorised fund manager must:

1. prepare a short report and a long report half-yearly and annually;
2. send the short report to all unitholders; and
3. make the long report available to unitholders on request.

Preparation of long and short reports

1. The authorised fund manager must for each annual accounting period and half-yearly accounting period, prepare a short report and a long report for a scheme.

2. For a scheme which is an umbrella, the authorised fund manager must prepare a short report for each sub-fund but this is not necessary for the umbrella as a whole.

3. Where the first annual accounting period of a scheme is less than 12 months, a half-yearly report need not be prepared.

4. [deleted]

ICVC requirements

1. The OEIC Regulations contain requirements for the preparation of annual and half-yearly reports and make the directors of an ICVC responsible for the preparation of annual and half-yearly reports on the ICVC.

2. Regulations 66 (Reports: preparation), 67 (Reports: accounts) and 68 (Reports: voluntary revision) of the OEIC Regulations also contain a number of other requirements relating to reports and accounts of an ICVC.
Contents of a short report

(1) The short report for an authorised fund, or for a scheme which is an umbrella, its sub-fund, must contain for the relevant period:

(a) (i) the name of the scheme or sub-fund;
    (ii) its stated investment objectives and the policy and strategy pursued for achieving those objectives;
    (iii) a brief assessment of its risk profile;
    (iv) in the case of a UCITS scheme, the figure for the synthetic risk and reward indicator disclosed in its most up-to-date key investor information document and any subsequent changes to that figure during that period; and
    (v) the name and address of the authorised fund manager;

(b) a review of the scheme or sub-fund's investment activities and investment performance during the period;

(c) a performance record consistent with COLL 4.5.10 R (1) (Comparative table) so as to enable a unitholder to put into context the results of the investment activities of the scheme during the period;

(d) sufficient information to enable unitholders to form a view on where the portfolio is invested at the end of the period and the extent to which that has changed over the period;

(e) any other significant information which would reasonably enable unitholders to make an informed judgement on the activities of the scheme or sub-fund during the period and the results of those activities at the end of the period; and

(f) a statement that the latest long report is available on request.

(1A) The short report of a UCITS scheme which is a feeder UCITS must also include:

(a) in relation to each annual accounting period only, a statement on the aggregate charges of the feeder UCITS and the master UCITS;

(b) a description of how the annual and half-yearly long reports of its master UCITS can be obtained; and

(c) where the master UCITS is a UCITS scheme, a description of how its annual and half-yearly short reports can be obtained.

[Note: article 63(2) of the UCITS Directive]
(IB) The short report of a feeder NURS must also include:

(a) in relation to each annual accounting period only, a statement on the aggregate charges of the feeder NURS and its qualifying master scheme;

(b) a description of how the annual and half-yearly long reports (or nearest equivalent documents for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme can be obtained; and

(c) where the qualifying master scheme is a UCITS scheme or non-UCITS retail scheme, a description of how the annual and half-yearly short reports of its qualifying master scheme can be obtained.

(2) The authorised fund manager must take reasonable steps to ensure that the short report is structured and written in such a way that it can be easily understood by the average investor.

(3) The short report must form a separate stand-alone document which must not include any extraneous material.

(4) The inclusion in a single document of the short reports of more than one of an authorised fund manager’s schemes with the same accounting periods, or of more than one sub-fund in an umbrella, is not a contravention of (3) if each such report is discrete and easily identifiable.

(5) The authorised fund manager must ensure that the information given in the short report is consistent with the long report for the relevant accounting period prepared under COLL 4.5.7 R (Contents of the annual long report) or COLL 4.5.8 R (Contents of the half-yearly long report).

Significant information to be contained in the short report

For the purpose of COLL 4.5.5 R (1)(d) and COLL 4.5.5 R (1)(e) the authorised fund manager should consider including the following as sufficient and significant information:

(1) particulars of any fundamental change to the scheme which required unitholder approval by meeting during the period;

(2) particulars of any significant change to the operation of the scheme requiring pre-notification, but this need only be given if the change impacts on the unitholders’ ability to make an informed judgement on the activities of the scheme;

(3) particulars of any other developments in relation to the investment policy and strategy of the scheme, or the instruments used by it during the period;

(4) the total expense ratio at the end of the period or, in the case of a UCITS scheme, the ongoing charges figure together with (where appropriate) any
performance-related fee payable to the authorised fund manager or any investment adviser;

(5) particulars of any qualification of the reports of the auditor and depositary; and

(6) particulars of any income or distribution relating to the period.

Contents of the annual long report

(1) An annual long report on an authorised fund, other than a scheme which is an umbrella, must contain:

(a) the accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 4.5.9 R (Authorised fund manager’s report);

(c) the comparative table in accordance with COLL 4.5.10 R (Comparative table);

(d) the report of the depositary in accordance with COLL 4.5.11 R (Report of the depositary); and

(e) the report of the auditor in accordance with COLL 4.5.12 R (Report of the auditor).

(2) An annual long report on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain:

(a) for each sub-fund:

(i) the accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;

(ii) the report of the authorised fund manager in accordance with COLL 4.5.9 R; and

(iii) the comparative table in accordance with COLL 4.5.10 R;

(b) the aggregation of the accounts required by (a)(i) for each sub-fund;

(c) the report of the depositary in accordance with COLL 4.5.11 R; and

(d) the report of the auditor in accordance with COLL 4.5.12 R.

(3) The directors of an ICVC or the manager of an AUT must ensure that the accounts referred to in (1)(a), (2)(a) and (4)(a)
give a true and fair view of the net revenue and the net capital gains or losses on the scheme property of the authorised fund, or, in the case of (2)(a) and (4)(a), the sub-fund, for the annual accounting period in question and the financial position of the authorised fund or sub-fund as at the end of that period.

(4) The authorised fund manager of a scheme which is an umbrella may, in addition to complying with (2), prepare a further annual long report for any one or more individual sub-funds of the scheme, in which case it must contain:

(a) in relation to the sub-fund:
   (i) the accounts for the annual accounting period which must be prepared in accordance with the requirements of the IMA SORP;
   (ii) the report of the authorised fund manager in accordance with COLL 4.5.9 R; and
   (iii) the comparative table in accordance with COLL 4.5.10 R;

(b) the report of the depositary in accordance with COLL 4.5.11 R; and

(c) the report of the auditor in accordance with COLL 4.5.12 R.

(5) An annual long report of a UCITS scheme which is a feeder UCITS must also include:

(a) a statement on the aggregate charges of the feeder UCITS and the master UCITS; and

(b) a description of how the annual long report of its master UCITS can be obtained.

[Note: article 63(2) of the UCITS Directive]

(6) An annual long report of a feeder NURS must also include:

(a) a statement on the aggregate charges of the feeder NURS and its qualifying master scheme; and

(b) a description of how the annual long report (or nearest equivalent document for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme can be obtained.

Contents of the half-yearly long report

1. A half-yearly long report on an authorised fund, other than for a scheme which is an umbrella, must contain:
(a) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and

(b) the report of the *authorised fund manager* in accordance with [COLL 4.5.9 R](#) (Authorised fund manager’s report).

(2) A half-yearly long report on a *scheme* which is an *umbrella* must be prepared for the *umbrella* as a whole and must contain:

(a) for each *sub-fund*:

(i) the accounts for the *half-yearly accounting period* which must be prepared in accordance with the requirements of the *IMA SORP*; and

(ii) the report of the *authorised fund manager* in accordance with [COLL 4.5.9 R](#); and

(b) the aggregation of the accounts in (a)(i) for each *sub-fund*.

(3) The *authorised fund manager* of a *scheme* which is an *umbrella* may, in addition to complying with (2), prepare a further half-yearly long report for any one or more individual *sub-funds* of the *scheme*. Such reports must contain the accounts and the report of the *authorised fund manager* that would be required by (1) if the *sub-fund* were a separate *authorised fund*.

(4) The half-yearly long report of a *UCITS scheme* which is a *feeder UCITS* must also include a description of how the half-yearly and annual reports of its *master UCITS* can be obtained.

[Note: article 63(2) second subparagraph of the *UCITS Directive*]

(5) The half-yearly long report of a *feeder NURS* must also include a description of how the half-yearly and annual long reports (or nearest equivalent documents for a qualifying *master scheme* that is a *recognised scheme*) of its qualifying *master scheme* can be obtained.

**Section 4.5 : Reports and accounts**

**COLL 4 : Investor Relations**

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**Annual and half-yearly long reports for sub-funds of an umbrella**

The *authorised fund manager* may, but need not, prepare annual and half-yearly long reports for any individual *sub-fund* of an *umbrella* in accordance with [COLL 4.5.7 R (4)](#) and [COLL 4.5.8 R (3)](#) and make them available on request to any *unitholder* investing in the relevant *sub-fund*. However, if the *authorised fund manager* does so, this does not relieve it of its duty:

(1) to prepare annual and half-yearly long reports on the *umbrella* as a whole ([COLL 4.5.7 R (2)](#) and [COLL 4.5.8 R (2)](#)); and
(2) to make available and publish the annual and half-yearly long reports for the 
*umbrella* as a whole (**COLL 4.5.14 R**).

**Signing of annual and half-yearly reports**

The annual reports in **COLL 4.5.7R (1)** and **(2)**, and the half-yearly reports in **COLL 4.5.8R (1)** and **(2)**, must:

1. in the case of an **ICVC**, if there is:
   - (a) more than one *director*, be approved by the board of *directors* 
     and signed on their behalf by the *ACD* and at least one other *director*; or
   - (b) no *director* other than the *ACD*, be signed by the *ACD*;

2. in the case of an **AUT**, if the *authorised fund manager* has:
   - (a) more than one director, be signed by at least two directors of 
     the *authorised fund manager*; or
   - (b) only one director, be signed by the director of the *authorised fund manager*.

**Authorised fund manager’s report**

The matters set out in (1) to (13) must be included in any *authorised fund manager’s report*, except where otherwise indicated:

1. the names and addresses of:
   - (a) the *authorised fund manager*;
   - (b) the *depositary*;
   - (c) the *registrar*;
   - (d) any *investment adviser*;
   - (e) the auditor; and
   - (f) for a *scheme* which invests in immovables, the *standing independent valuer*;

2. (for an **ICVC**), the names of any *directors* other than the *ACD*;

3. a statement of the authorised status of the *scheme*;

4. (for an **ICVC**) a statement that the *unitholders* of the **ICVC** are 
   not liable for the debts of the **ICVC**;

5. the investment objectives of the *authorised fund*;

6. the policy and strategy pursued for achieving those objectives;
(7) a review of the investment activities during the period to which the report relates;

(7A) a portfolio statement prepared in accordance with the requirements of the IMA SORP;

(8) particulars of any fundamental changes in accordance with COLL 4.3.4 R (Fundamental change requiring prior approval by meeting) made since the date of the last report;

(9) particulars of any significant changes which have occurred in accordance with COLL 4.3.6 R (Significant change requiring pre-event notification) since the date of the last report;

(9A) in the case of a UCITS scheme, the figure for the synthetic risk and reward indicator disclosed in its most recent key investor information document and any changes to that figure that have taken place during the period;

(10) any other information which would enable unitholders to make an informed judgement on the development of the activities of the authorised fund during this period and the results of those activities as at the end of that period;

(11) for a report on an umbrella prepared in accordance with COLL 4.5.7 R (2) or COLL 4.5.8 R (2), information required by (1) to (10) must be given for each sub-fund, if it would vary from that given in respect of the umbrella as a whole;

(12) for a UCITS scheme which invests a substantial proportion of its assets in other schemes, a statement as to the maximum proportion of management fees charged to the scheme itself and to other schemes in which that scheme invests; and

(13) for a report on an individual sub-fund of a scheme which is an umbrella prepared in accordance with COLL 4.5.7 R (4) or COLL 4.5.8 R (3), a statement that the latest long report prepared for the umbrella as a whole is available on request.

Comparative table

The comparative table required by COLL 4.5.7 R (1)(c) (Contents of the annual long report) must set out:

(1) a performance record over the last five calendar years, or if the authorised fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing:
(a) the highest and the lowest price of a unit of each class in issue during each of those years; and

(b) the net income distributed (or, for accumulation units, allocated) for a unit of each class in issue during each of those years, taking account of any sub-division or consolidation of units that occurred during that period;

(2) as at the end of each of the last three annual accounting periods (or all of the authorised fund’s annual accounting periods, if less than three):

(a) the total net asset value of the scheme property at the end of each of those years;

(b) the net asset value per unit of each class; and

(c) (i) (for a report of the directors of an ICVC) the number of units of each class in issue; or

(ii) (for a report of the manager of an AUT) the number of units of each class in existence or treated as in existence; and

(3) if, in the period covered by the table:

(a) the authorised fund has been the subject of any event (such as a scheme of arrangement) having a material effect on the size of the authorised fund, but excluding any issue or cancellation of units for cash; or

(b) there have been changes in the investment objectives of the authorised fund;

(c) an indication, related in the body of the table to the relevant year in the table, of the date of the event or change in the investment objectives and a brief description of its nature.

Report of the depositary

(1) The depositary must make an annual report to unitholders which must be included in the annual report.

(2) The annual report must contain:

(a) a description, which may be in summary form, of the duties of the depositary under COL 6.6.4 (General duties of the depositary) and in respect of the safekeeping of the scheme property; and

(b) a statement whether, in any material respect:

(i) the issue, sale, redemption and cancellation, and calculation of the price of the units and the application of
the authorised fund’s revenue, have not been carried out in accordance with the rules in this sourcebook and, where applicable, the OEIC Regulations and the instrument constituting the scheme; and

(ii) the investment and borrowing powers and restrictions applicable to the authorised fund have been exceeded.

Report of the auditor

The authorised fund manager must ensure that the report of the auditor to the unitholders includes the following statements:

(1) whether, in the auditor's opinion, the accounts have been properly prepared in accordance with the IMA SORP, the rules in this sourcebook, and the instrument constituting the scheme;

(2) whether, in the auditor's opinion, the accounts give a true and fair view of the net revenue and the net capital gains or losses on the scheme property of the authorised fund (or, as the case may be, the scheme property attributable to the sub-fund) for the annual accounting period in question and the financial position of the authorised fund or sub-fund as at the end of that period;

(3) whether the auditor is of the opinion that proper accounting records for the authorised fund (or, as the case may be, sub-fund) have not been kept or whether the accounts are not in agreement with those records;

(4) whether the auditor has been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit; and

(5) whether the auditor is of the opinion that the information given in the report of the directors or in the report of the authorised fund manager for that period is consistent with the accounts.

Provision of short report

(1) The authorised fund manager must, within four months after the end of each annual accounting period and within two months after the end of each half-yearly accounting period, respectively provide free of charge the short report in accordance with (2).

(2) The authorised fund manager must send a copy of the report:

(a) to each unitholder (or to the first named of joint unitholders) entered in or entitled to be entered in the register at the close of business on the last day of the relevant accounting period;
(b) to each unitholder of bearer units at his request; and
(c) to any other person free of charge on request.

(3) Unitholders in a scheme which is an umbrella must be provided with a report relating to the particular sub-fund in which they hold units subject to providing the long report on the umbrella on request in accordance with COLL 4.5.14 R (2)(a).

Publication and availability of annual and half-yearly long report

(1) The authorised fund manager must, within four months after the end of each annual accounting period and two months after the end of each half-yearly accounting period respectively, make available and publish the long reports prepared in accordance with COLL 4.5.7 R (1) to COLL 4.5.8 R (1) (Contents of the annual long report) and COLL 4.5.8 R (1) to COLL 4.5.8 R (2) (Contents of the half-yearly long report).

(2) The reports referred to in (1) must:
   (a) be supplied free of charge to any person on request;
   (b) be available in English, for inspection by the public free of charge during ordinary office hours at a place specified;
   (c) for a UCITS scheme, be available for inspection by the public at a place designated by the authorised fund manager in each EEA State other than the United Kingdom in which units in the authorised fund are marketed, in English and in at least one of that other EEA State’s official languages; and
   (d) be sent to the FCA and, if the UCITS scheme is managed by an EEA UCITS management company, to that company’s Home State regulator on request.

[Note: article 74 of the UCITS Directive]

Provision of annual and half-yearly long reports for master and feeder UCITS

(1) The authorised fund manager of a UCITS scheme which is a feeder UCITS must:
   (a) where requested by an investor, provide copies of the annual and half-yearly long reports of its master UCITS free of charge; and
   (b) file copies of the annual and half-yearly long reports of its master UCITS with the FCA.

(2) Except where an investor requests paper copies or the use of electronic communications is not appropriate, the annual and half-yearly long reports of its master UCITS may be provided in
a durable medium other than paper or by means of a website that meets the website conditions.

[Note: articles 63(3) and 63(5) of the UCITS Directive]

Provision of annual and half-yearly long reports for qualifying master schemes of feeder NURS

1. The authorised fund manager of a feeder NURS must, where requested by an investor or the FCA, provide to such person copies of the annual and half-yearly long reports (or nearest equivalent documents for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme free of charge.

2. Except where an investor requests paper copies or the use of electronic communications is not appropriate, the annual and half-yearly long reports (or nearest equivalent documents for a qualifying master scheme that is a recognised scheme) of its qualifying master scheme may be provided in a durable medium other than paper, or by means of a website that meets the website conditions.
4.6 Simplified Prospectus provisions

Application

This section applies to an ICVC, an authorised fund manager of an AUT or ICVC and any other director of an ICVC where, in each case, the AUT or ICVC is a simplified prospectus scheme.

Production and publication of simplified prospectus

(1) An operator of a simplified prospectus scheme must, for each simplified prospectus scheme in respect of which it is the operator, produce and publish a simplified prospectus in accordance with the rules in this section and ensure that it contains in summary form each of the matters referred to in the table below that relates to this rule.

(2) A simplified prospectus must be incorporated in a written document or in any durable medium.

(3) An operator of a simplified prospectus scheme must be satisfied on reasonable grounds that each simplified prospectus which it produces:

(a) includes all such information as is necessary to enable an investor to make an informed decision about whether to acquire units in the scheme;

(b) does not omit any key item of information;

(c) wherever possible is written in plain language which avoids technical language and jargon; and

(d) adopts a format and style of presentation which is clear and attractive to the average reader, so that it can be easily understood by him.

(4) The simplified prospectus may be attached to the full prospectus as a removable part of it.
Revision of simplified prospectus

An operator of a simplified prospectus scheme must, for each simplified prospectus scheme of which it is the operator, keep its simplified prospectus up-to-date and must revise it immediately on the occurrence of any material change.

It is the FCA’s view that any change to a simplified prospectus scheme that would be likely to influence the average investor in deciding whether to invest in the scheme or realise his investment in it should be regarded as a material change for the purposes of revision of a simplified prospectus. Examples would be changes to the scheme’s objectives or investment policy. The FCA would expect a simplified prospectus to be updated at least annually.

Filing requirements

A UCITS management company must for each UCITS scheme it manages file the scheme’s initial simplified prospectus, together with each revision to it, with:

(1) the FCA; and

(2) the competent authority of each EEA state in which its units are to be marketed in the exercise of an EEA right.

UK firms exercising passporting rights in respect of UCITS scheme

(1) A UCITS management company must for each UCITS scheme it manages and in respect of which it is marketing units in another EEA State in the exercise of an EEA right, produce a simplified prospectus for the scheme drawn up in accordance with the requirements contained in this section.

(2) The simplified prospectus must be drawn up in the, or one of the, official languages of the EEA State for which it was prepared or in a language approved by the competent authority of that EEA State.

(3) The simplified prospectus may, without alteration, be used for marketing purposes in the EEA State for which it was prepared and in which the units of the simplified prospectus scheme are to be sold.

(1) In translating the simplified prospectus from English into one or more of the official languages of the EEA State in which the simplified prospectus scheme is to be marketed, or into a language approved by the competent authority of that State, it is permissible under article 28.3 of the UCITS Directive, in the FCA’s view, for figures expressed in pounds sterling to be converted into the appropriate local currency such as euros. It is not necessary, for example, for the simplified prospectus of a scheme that is to be marketed across the EEA in the exercise of an EEA right, to refer to each amount in pounds sterling, in euros and additionally in every other local currency of an EEA...
State in which units of the scheme are to be marketed that has not adopted the euro as its currency.

(2) Operators considering marketing the units of their simplified prospectus schemes in another EEA State in the exercise of an EEA right should have regard to the local marketing legislation of such country.

### Contents of the simplified prospectus

This table belongs to the rule on production and publication of a simplified prospectus (COLL 4.6.2 R and COLL 4.6.6 R)

#### Contents of simplified prospectus

**Note:** By reproducing schedule C (Contents of the simplified prospectus) to the *UCITS Directive* (as amplified by Commission Recommendation (2004/384/EC)) and cross-referencing to other relevant material, this annex details the facts or matters that must included in a simplified prospectus.

**Brief presentation of the simplified prospectus scheme** (in this Table referred to as "the scheme").

- **(1)** when the scheme was created and an indication of the EEA State where the scheme has been registered or incorporated;
- **(2)** in the case of a scheme having different investment compartments (sub-funds), the indication of this circumstance;
- **(3)** the name and contact details of the operator (when applicable);
- **(4)** the expected period of existence of the scheme (when applicable);
- **(5)** the name and contact details of the depositary;
- **(6)** the name and contact details of the auditors;
- **(7)** the name and brief details of the financial group (e.g. a bank) promoting the scheme;

**Investment information**

- **(8)** a short description of the scheme's objectives including:
  - **(a)** a concise and appropriate description of the outcomes sought for any investment in the scheme;
  - **(b)** a clear statement of any guarantees offered by third parties to protect investors and any restrictions on those guarantees;
  - **(c)** a statement, where relevant, that the scheme is intended to track an index or indices, and sufficient information to enable investors both to identify the relevant index or indices.
and to understand the extent or degree of tracking pursued; and

(d) where the scheme is a qualifying money market fund, short-term money market fund or money market fund, a statement identifying it as such a fund and a statement that the scheme’s investment objectives and policies will meet the conditions in the definition of qualifying money market fund, short-term money market fund or money market fund, as appropriate;

Notes:

1. Information on (8)(a) should include a statement as to whether there is any arrangement intended to result in a particular capital or income return from the units or any investment objective of giving protection to their capital value or income return and, if so, details of that arrangement or protection.

2. The information disclosed under (8)(b) should include an explanation of what is to happen when an investment is encashed before the expiry of any related guarantee or protection.

(9) the scheme’s investment policy, including:

(a) the main categories of eligible financial instruments which are the object of investment;

(b) whether the scheme has a particular strategy in relation to any industrial, geographic or other market sectors or specific classes of assets, e.g. investments in emerging countries’ financial instruments;

(c) where relevant, a warning that, whilst the actual portfolio composition is required to comply with the broad legal and statutory rules and limits, risk-concentration may occur in regard of certain tighter asset classes, economic and geographic sectors;

(d) if the scheme invests in bonds, an indication of whether they are corporate or government, their duration and the ratings requirements;

(e) if the scheme uses financial derivative instruments, an indication of whether this is
done in pursuit of the scheme's objectives, or for hedging purposes only;

(f) whether the scheme's management style makes some reference to a benchmark; and in particular whether the scheme has an 'index tracking' objective, with an indication of the strategy to be pursued to achieve this; and

(g) whether the scheme's management style is based on a tactical asset allocation with high frequency portfolio adjustments;

provided the information is material and relevant;

Note: The information referred to in paragraphs (8) and (9) may be set out as a single item in the simplified prospectus (e.g. for the information on index tracking), provided that the information so combined does not lead to confusion of the objectives and policies of the scheme. The order of the information items may be adapted to reflect the scheme's specific investment objectives and policy.

(10) a brief assessment of the scheme's risk profile by investment compartment or sub-fund, including:

(a) overall structure of the information provided:

(i) a statement to the effect that the value of investments may fall as well as rise and that investors may get back less than they put in;

(ii) a statement that details of all the risks actually mentioned in the simplified prospectus may be found in the full prospectus;

(iii) a description in words of any risk investors have to face in relation to their investment, but only where such risk is relevant and material, based on risk impact and probability; and

(b) details regarding the description (in words) of the following risks:

(i) specific risks:
The description referred to in paragraph (10)(a)(iii) should include a brief and understandable explanation of any specific risk arising from particular investment policies or strategies or associated with specific markets or assets relevant to the scheme such as:

A the risk that the entire market of an asset class will decline thus affecting the prices and values of the assets (market risk);

B the risk that an issuer or a counterparty will default (credit risk);

C only where strictly relevant, the risk that a settlement in a transfer system does not take place as expected because a counterparty does not pay or deliver on time or as expected (settlement risk);

D the risk that a position cannot be liquidated in a timely man-
ner at a reasonable price (liquidity risk); the risk that the investment’s value will be affected by changes in exchange rates (exchange or currency risk);

only where strictly relevant, the risk of loss of assets held in custody that could result from the insolvency, negligence or fraudulent action of the custodian or of a subcustodian (custody risk); and

risks related to a concentration of assets or markets; and

(ii) horizontal risk factors:

The description referred to in paragraph (10)(a)(iii) should also mention, where relevant and material, the following factors that may affect the product:

performance risk, including the variability of risk levels depend-
ing on individual fund selections, and the existence, absence of, or restrictions on any guarantees given by third parties;

B  risks to capital, including potential risk of erosion resulting from withdrawals/cancellations of units and distributions in excess of investment returns;

C  exposure to the performance of the provider/third-party guarantor, where investment in the product involves direct investment in the provider, rather than assets held by the provider;

D  inflexibility, both within the product (including early surrender risk) and constraints on switching to other providers;
inflation risk; and
lack of certainty that environmental factors, such as a tax regime, will persist;
possible prioritisation of information disclosure:
In order to avoid conveying a misleading image of the relevant risks, the information items should be presented so as to prioritise, based on scale and materiality, the risks so as to better highlight the individual risk profile of the scheme;
the historical performance of the scheme (where applicable) and a warning that this is not an indicator of future performance (which may be either included in or attached to the simplified prospectus), including:
disclosure of past performance:
the scheme's past performance, as presented using a bar chart showing annual returns for the last ten full consecutive years. If the scheme has been in existence for fewer than ten years but at least for a period of one year, it is recommended that the annual returns, calculated net of tax and charges, be given for as many years as are available; and
if a scheme is managed according to a benchmark or if its cost structure includes a performance fee depending on a benchmark, the information on the past performance of the scheme should include a comparison with the past
| Notes: | Comparison should be achieved by representing the past performance of the benchmark and that of the scheme through the use of appropriate graphs to assist the reader to make the comparison. |
| (b) | disclosure of cumulative performance: |
| | Disclosure should be made of the cumulative performance of the scheme over the ten year period referred to in paragraph (11)(a)(i). A comparison should also be made with the cumulative performance (where relevant) of a benchmark, when comparison to a benchmark is required in accordance with paragraph (11)(a)(ii); |
| Notes: | Where the scheme has been in existence for fewer than ten years but at least for a period of one year, disclosure of the past cumulative performance should be made for as many years as are available. |
| (c) | exclusion of subscription and redemption fees, subject to appropriate disclosure: |
| | A statement should be made that past performance of the scheme does not include the effect of subscription and redemption fees. |
| Notes: | 1. Where a comparison is being made with the cumulative performance of a benchmark as required by paragraph (11)(b), the comparison should be achieved by representing the past performance of the benchmark and that of the scheme through the use of appropriate graphs to assist the reader to make the comparison. |
| | 2. The scheme's historical performance may be produced as a separate attachment to the simplified prospectus. |
| (12) | a profile of the typical investor the scheme is designed for; |
| Economic information | the scheme's applicable tax regime, including: |
| (13) | the tax regime applicable to the scheme in the UK; and |

**Note:**
(b) a statement which explains that the regime of taxation of the income or capital gains received by individual investors depends on the tax law applicable to the personal situation of each individual investor and/or to the place where the capital is invested and that if investors are unclear as to their fiscal position, they should seek professional advice or information from local organisations, where available;

Note: This information should include a statement in relation to SDRT provision, explaining how the scheme may suffer stamp duty reserve tax as a result of transactions in units and whether the operator's policy is such that an SDRT provision may be imposed.

(14) details of any entry and exit commissions relating to the scheme and details of the scheme's other possible expenses or fees, distinguishing between those to be paid by the unitholder and those to be paid from the scheme’s or the sub-fund’s assets, including:

(a) overall contents of the information provided:

(i) disclosure of a total expense ratio (TER), calculated as indicated in Annex 1 to this chapter, except for a newly created fund where a TER cannot yet be calculated;

(ii) on an ex ante basis, disclosure of the expected cost structure, that is an indication of all costs available according to the list set forth in Annex 1 to this chapter so as to provide investors, in so far as possible, with a reasonable estimate of expected costs;

(iii) all entry and exit commissions and other expenses directly paid by the investor;

(iv) an indication of all the other costs not included in the TER, including disclosure of transaction costs;

(v) as an additional indicator of the importance of transaction costs, the portfolio turnover.
rate, calculated as shown in Annex 2 to this chapter; and

an indication of the existence of fee-sharing agreements and soft commissions;

(vi) In explaining the function of the TER to the reader, appropriate wording should be used in the simplified prospectus. For example, TER might be explained in the following terms: "The TER shows the annual operating expenses of the scheme - it does not include transaction expenses. All European funds highlight the TER to help you compare the annual operating expenses of different schemes."

1. Paragraph (14)(a)(vi) should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the Handbook. Taking into account current market practice, consideration should be given as to how far the
scheme’s existing fee-sharing agreements and comparable fee arrangements are for the exclusive benefit of the scheme.

4. The simplified prospectus should make a reference to the full prospectus for detailed information on these kinds of arrangements, which should allow any investor to understand to whom expenses are to be paid and how possible conflicts of interest will be resolved in his/her best interest. The information provided in the simplified prospectus should remain concise in this respect.

5. Details of entry and exit commissions relating to the scheme and details of the scheme’s other possible expenses or fees, must be presented in the simplified prospectus in the form required by COBS 4.6.9 R (Charges and reduction in yield).

(b) information about ‘fee sharing agreements' and 'soft commissions';

(i) identification of 'fee-sharing agreements';

Note: For the purposes of paragraph (14)(b)(i), fee-sharing agreements should be taken as those agreements whereby a party remunerated, either directly or indirectly, out of the assets of a scheme agrees to split its remuneration with another party and which result in that other party meeting expenses through this fee-sharing agreement that should normally be met, either directly or indirectly, out of the assets of the scheme.

(ii) identification of soft commissions;

Note: For the purposes of paragraph (14) (b) (ii), soft commissions should be regarded as any economic benefit, other than clearing and execution services, that an asset manager re-
receives in connection with the scheme's payment of commissions on transactions that involve the scheme's portfolio securities. Soft commissions are typically obtained from, or through, the executing broker.

(c) presentation of TER and portfolio turnover rate;

Note: Both the TER and the portfolio turnover rate may be either included in or attached to the simplified prospectus in the same paper as information on past performance.

Commercial information

(15) how to buy the units;

Note: This should include an explanation of any relevant right to cancel or withdraw from the purchase, or, where it is the case, that such rights do not apply.

(16) how to sell the units;

(17) in the case of a scheme having different investment compartments (sub-funds), an explanation of how to switch from one investment compartment into another and any charges applicable in such cases;

(18) when and how dividends on units or shares of the scheme (if applicable) are distributed;

(19) when and where prices of units are published or made available;

Additional information

(20) A statement that, on request, the full prospectus and the annual and half-yearly reports of the scheme may be obtained free of charge before the conclusion of the contract and afterwards, together with details of how they may be obtained or how a person may gain access to them;

(21) the name and contact details of the FCA as being the competent authority which has authorised or registered the scheme;

(22) details of a contact point (person or department, and, if appropriate the times of day etc.) where additional information may be obtained if needed;

(23) the date of publication of the simplified prospectus;

Additional information for a feeder NURS: Objectives and investment policy

(24) (a) where the scheme is a feeder NURS, in the description of objectives and investment policy, information about the proportion of the feeder NURS' assets which is invested in the qualifying master scheme; and
(b) a description of the *qualifying master scheme*'s objectives and investment policy, supplemented by:

(i) an indication that the investment returns of the *feeder NURS* will be very similar to those of the *qualifying master scheme*; or

(ii) an explanation of how and why the investment returns of the *feeder NURS* and *qualifying master scheme* may differ;

Additional information for a feeder NURS: Risk profile

(25) (a) a description and explanation of any material differences between the risk profile of the *feeder NURS* and that of the *qualifying master scheme*; and

(b) details of:

(i) any liquidity risk; and

(ii) the relationship between purchase and redemption arrangements for the *qualifying master scheme* and *feeder NURS*;

Additional information for a feeder NURS: Practical information

(26) where the *scheme* is a *feeder NURS*, information specific to the *feeder NURS*, including:

(a) a statement that the following *documents* of the *qualifying master scheme* are available to *unitholders* of the *feeder NURS* upon request, and details of how they may be obtained:

(i) the *prospectus*;

(ii) A *the key investor information document*; or

B where the *authorised fund manager* of the *qualifying master scheme* has a dispensation in the
form of a
general waiver by consent
so that it may
provide a key
investor information document as modified by the
general waiver direction,
that document (a
'NURS KII document');
or

C
the key features document; or

D
the simplified prospectus; or

E
the nearest equivalent document for
a qualifying master scheme that
is a recognised scheme;

(iii)
the annual and half-yearly
long reports (or nearest
equivalent documents for a
qualifying master scheme
that is a recognised scheme); and

(iv)
where the qualifying master scheme is a UCITS scheme or non-UCITS retail scheme,
it is annual and half-yearly
short reports;

(b)
where the qualifying master scheme is not established in the United Kingdom, and
where this may affect the feeder NURS' tax treatment, a statement to this effect;

Feeder NURS: past performance presentations
(27) (a) any past performance presentation in the document of the feeder NURS must be specific to the feeder NURS and must not reproduce the performance record of the qualifying master scheme;

(b) the requirement in (a) does not apply where the feeder NURS:

(i) shows the past performance of its qualifying master scheme as a benchmark; or

(ii) was launched as a feeder NURS at a later date than the qualifying master scheme and where a simulated performance which is based on the past performance of the qualifying master scheme is shown for the years before the feeder NURS existed; or

(iii) has a performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart of the relevant years, with any material change labelled.

General Note:

In making the disclosures required by paragraphs (8) to (19) of this Table, the information must be presented in the form of questions and answers. This format is designed to assist the comprehension of the reader. This requirement will not apply in relation to a simplified prospectus that is to be used to market the units of the scheme in another EEA state or in relation to a simplified prospectus that is to be used to market the units of the scheme exclusively to persons who are not retail clients.

Charges and reduction in yield

(1) In disclosing the information required by paragraph 14 of

■ COBS 4.6.8 G (Table: Contents of the simplified prospectus), a firm must include an effect of charges table and a reduction in yield figure prepared in accordance with the rules in sections 2 (Effect of charges table) and 3 (Reduction in yield) of

■ COBS 13 Annex 3.
(2) This rule does not apply to a simplified prospectus for units in a simplified prospectus scheme that will be marketed and sold in another EEA State or exclusively to those who are not retail clients.

(3) Note (5) to paragraph (14) of § COBS 4.6.8 G, and § COBS 4.6.9 R cease to have effect on 30 June 2011, unless remade.

Composite documents for several schemes, sub-funds and classes

In the FCA’s view, a firm may, for the purposes of the rules in § COBS 14 requiring a firm to provide a key features document or a simplified prospectus, combine the required information on several simplified prospectus schemes, key features scheme or EEA simplified prospectus schemes or any combination of them into a composite document, provided the document continues to comply with the general requirements such as being clear. Similarly, the information on different sub-funds or classes within a scheme may be combined into a composite document or provided as separate documents. Where the latter approach is adopted, references in this section to “scheme” or “simplified prospectus scheme” should be taken as referring to the relevant sub-fund or class, as applicable.

Multiclass schemes: use of representative class

In the FCA’s view, where a simplified prospectus scheme has more than one class of unit, the simplified prospectus may be prepared on a representative class basis, provided this is made clear and there is no material difference in the classes concerned. The same applies for an umbrella, as regards any sub-fund with more than one class of units.

An authorised fund manager must ensure that its financial promotions which contain an invitation to purchase units in a UCITS scheme indicate that a simplified prospectus and a full prospectus exist, and the places where they may be obtained by the public or how the public may have access to them.

Use of the “keyfacts” logo within a simplified prospectus

A simplified prospectus may include the “keyfacts” logo if:

(1) the “keyfacts” logo is situated in a prominent position at the top of the document; and

(2) The document also contains the following statement in a prominent position:

"The Financial Conduct Authority is an independent financial services regulator. It requires us, [provider name], to give you this important information to help you to decide whether our [product name] is right for you. You should read this document carefully so that you understand what you are buying, and then keep it safe for future reference".
4.7 Key investor information and marketing communications

Application

This section applies to an ICVC, an authorised fund manager of an AUT or ICVC and any other director of an ICVC where, in each case, the AUT or ICVC is a UCITS scheme.

Key investor information

4.7.1 FCA

(1) An authorised fund manager must, for each UCITS scheme which it manages, draw up a short document in English containing key investor information (a "key investor information document") for investors.

(2) The words "key investor information" must be clearly stated in this document.

(3) Key investor information must include appropriate information about the essential characteristics of the UCITS scheme which is to be provided to investors so that they are reasonably able to understand the nature and risks of the investment product that is being offered to them and, therefore, to take investment decisions on an informed basis.

(4) Key investor information must provide information on the following essential elements in respect of the UCITS scheme:

(a) identification of the scheme;
(b) a short description of its investment objectives and investment policy;
(c) past performance presentation or, where relevant, performance scenarios;
(d) costs and associated charges; and
(e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the scheme.
(5) The essential elements referred to in (4) must be comprehensible to the investor without any reference to other documents.

(6) A key investor information document must clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request and free of charge at any time, and the language in which that information is available to investors.

(7) Key investor information must be written in a concise manner and in non-technical language. It must be drawn up in a common format, allowing for comparison, and must be presented in a way that is likely to be understood by retail investors.

(8) Key investor information must be used without alterations or supplements, except translation, in each EEA State where a UCITS marketing notification has been made so as to enable the marketing of the scheme’s units in that State.

[Note: article 78 of the UCITS Directive]

Form and content of a key investor information document

The KII Regulation sets out the form and content of a key investor information document. This Regulation is directly applicable in the United Kingdom and accordingly its articles (but not the preceding recitals) are binding on all firms to which it applies. Under the Regulation an authorised fund manager must ensure that each key investor information document it produces for a UCITS scheme complies with the requirements of the Regulation. For ease of reference the Regulation is reproduced in COLL Appendix 1EU (The KII Regulation).

Translation of a key investor information document

While the original key investor information document is required by COLL 4.7.2 R to be drawn up in English, an authorised fund manager may prepare an accurate translation of it into any language for the purpose of marketing the units of the UCITS scheme in the United Kingdom. Any such translation should be prepared without alterations or supplements.

Pre-contractual information

The key investor information document must:

(1) constitute pre-contractual information (see COBS 14.2.1A R (Provision of key investor information document));

(2) be fair, clear and not misleading; and

(3) be consistent with the relevant parts of the prospectus.

[Note: article 79(1) of the UCITS Directive]
4.7.6 FCA

(1) Section 90ZA of the Act (Liability for key investor information) provides that a person will not incur civil liability solely on the basis of the key investor information document, including any translation of it, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus.

(2) Article 20 of the KII Regulation prescribes the wording of a warning to investors that must be included in the "practical information" section of the key investor information document. It states that an authorised fund manager may be held liable solely on the basis of any statement contained in the document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UCITS scheme.

Revision and filing of key investor information

4.7.7 FCA

(1) An authorised fund manager must keep up to date the essential elements of the key investor information document for each UCITS scheme which it manages.

(2) An authorised fund manager must file the key investor information document for each UCITS scheme which it manages, and any amendments thereto, with the FCA.

(3) An authorised fund manager of a feeder UCITS must, in addition to (1) and (2), file the key investor information of its master UCITS, and any amendments thereto, with the FCA.

[Note: articles 63(3) and 82 of the UCITS Directive]

Synthetic risk and reward indicators and ongoing charges disclosures in the KII

4.7.8 FCA

(1) Authorised fund managers are advised that CESR issued two separate guidelines regarding the methodology that should be used in calculating the synthetic risk and reward indicator and the ongoing charges figure, both of which must be disclosed in the key investor information document for each UCITS scheme which they manage.

(2) In line with the KII Regulation, firms in producing their key investor information documents should take account of CESR’s methodologies in calculating the figures for the synthetic risk and reward indicators and for ongoing charges to be disclosed in those documents. For ease of reference links to these guidelines are shown below, as follows:

Methodology for the calculation of the synthetic risk and reward indicator in the KII (CESR/10-673)

http://www.esma.europa.eu/node/49058

Methodology for the calculation of the ongoing charges figure in the KII (CESR/10-674)

http://www.esma.europa.eu/node/49059
Firms should note that these methodologies may in due course become directly applicable obligations in the light of the European Securities and Markets Authority’s powers to develop implementing technical standards in this area.

Authorised fund managers are further advised that CESR issued guidelines in relation to several other matters concerning key investor information. These are:

Guidelines - Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (CESR/10-1318)
http://www.esma.europa.eu/node/49173

Guidelines - Transition from the Simplified Prospectus to the Key Investor Information document (CESR/10-1319)
http://www.esma.europa.eu/node/49174

CESR’s guide to clear language and layout for the Key Investor Information document (CESR/10-1320)
http://www.esma.europa.eu/node/49175

CESR’s template for the Key Investor Information document (CESR/10-1321)
http://www.esma.europa.eu/content/CESR%E2%80%99s-template-Key-Investor-Information-document

CESR’s guidelines on a common definition of European money market funds, which refer to matters that should be included in the key investor information for money market funds and short-term money market funds (CESR/10-049)
http://www.esma.europa.eu/content/Guidelines-Common-definition-European-money-market-funds

Marketing communications

COBS 4.13.2R(1)(b) and (c) (Marketing communications relating to UCITS schemes or EEA UCITS schemes) require an authorised fund manager to ensure that its marketing communications that contain an invitation to purchase units in a UCITS scheme or EEA UCITS scheme, indicate that a prospectus and key investor information exist, specifying where they may be obtained by the public or how the public may have access to them.
4.8 Notifications for UCITS master-feeder arrangements

Application

4.8.1 FCA

This section applies to an ICVC, an authorised fund manager of an AUT or ICVC and any other director of an ICVC where, in each case, the AUT or ICVC is a UCITS scheme.

Purpose

4.8.2 FCA

The purpose of this section is to explain the type, form and timing of the notifications that are required before an existing UCITS scheme can begin to operate as a feeder UCITS for the first time, or an existing feeder UCITS can change to a different master UCITS. The process for making those changes is set out in COLL 11.2 (Approval of a feeder UCITS).

Information to be provided to unitholders

4.8.3 FCA

(1) An authorised fund manager of a UCITS scheme that has been approved by the FCA to operate as a feeder UCITS, including as a feeder UCITS of a different master UCITS, must provide the following information to its unitholders at least 30 calendar days before the date when the feeder UCITS is to start to invest in units of the master UCITS or, if it has already invested in them, the date when its investment will exceed the limit applicable under COLL 5.2.11 R (9) (Spread: general):

(a) a statement that the FCA has approved the investment of the feeder UCITS in units of that master UCITS;

(b) the key investor information of the feeder UCITS and the master UCITS;

(c) the date when the feeder UCITS is to start to invest in units of the master UCITS or, if it has already invested in them, the date when its investment will exceed the limit applicable under COLL 5.2.11 R (9);

(d) a statement that the unitholders have the right, for 30 calendar days from the moment this information is provided, to request the repurchase or redemption of their units without any charges other than those retained by the UCITS scheme to cover disinvestment costs.
(2) Where a UCITS marketing notification has been made in relation to a feeder UCITS, the authorised fund manager of the feeder UCITS must ensure that an accurate translation of the information in (1) is provided to unitholders in:

(a) the official language, or one of the official languages, of the feeder UCITS’ Host State; or

(b) a language approved by the Host State regulator.

[Note: article 64 first and second paragraphs of the UCITS Directive]

Method of providing information

The authorised fund manager of the feeder UCITS must provide to unitholders the information required under COLL 4.8.3 R in a durable medium.

[Note: article 29 of the UCITS implementing Directive No 2]
## Total expense ratio calculation

This Annex belongs to the rule on the contents of the simplified prospectus in this chapter.

### Total expense ratio (TER)

1. **Definition of the TER**

   The total expense ratio (TER) of a *simplified prospectus scheme* is the ratio of the scheme's total operating costs to its average net assets calculated according to paragraph 3.

2. **Included/excluded costs**

   (a) The total operating costs are all the expenses which come in deduction of a *simplified prospectus scheme*'s assets. These costs are usually shown in a scheme's statement of operation for the relevant fiscal period. They are assessed on an 'all taxes included' basis, which means that the gross value of expenses should be used.

   (b) Total operating costs include any legitimate expenses of the *simplified prospectus scheme*, whatever their basis of calculation (e.g. flat-fee, asset-based, transaction-based - see note 2 above), such as:

   - management costs including performance fees;
   - administration costs;
   - fees linked to depositary duties;
   - audit fees;
   - payments to shareholder services providers including payments to the *simplified prospectus scheme*'s transfer agent and payments to broker-dealers that are record owners of the scheme's shares and that provide sub-ac-
Total expense ratio (TER)

- counting services for the beneficial owners of the scheme's shares;
- payments to lawyers;
- any distribution or unit cancellation costs charged to the scheme;
- registration fees, regulatory fees and similar charges;
- any additional remuneration of the management company (or any other party) corresponding to certain fee-sharing agreements in accordance with paragraph 4 below.

(c) The total operating costs do not include:
- transaction costs which are costs incurred by a simplified prospectus scheme in connection with transactions on its portfolio. They include brokerage fees, taxes and linked charges and the market impact of the transaction taking into account the remuneration of the broker and the liquidity of the concerned assets;
- interest on borrowing;
- payments incurred because of financial derivative instruments;
- entry/exit commissions or any other fees paid directly by the investor;
- soft commissions in accordance with paragraph 4.
Total expense ratio (TER)

3. Calculation method and disclosure

(a) The TER is calculated at least once a year on an ex post basis, generally with reference to the fiscal year of the simplified prospectus scheme. For specific purposes it may also be calculated for other time periods. The simplified prospectus should in any case include a clear reference to an information source (e.g. the scheme's website) where the investor may obtain previous years'/periods' TER figures.

(b) The average net assets must be calculated using figures that are based on the scheme's net assets at each calculation of the net asset value (NAV), e.g. daily NAVs where this is the normal frequency of NAV calculation as approved by the simplified prospectus scheme's competent authorities. Further circumstances or events which could lead to misleading figures have equally to be taken into consideration.

Tax relief should not be taken into account.

The calculation method of the TER must be validated by the simplified prospectus scheme's auditors and/or competent authorities.

4. Fee-sharing agreements and soft commissions

It regularly results from fee-sharing agreements on expenses that are generally not included in the TER, that the management company or another party is actually meeting, in all or in part, operating costs that should normally be included in the TER. They should therefore be taken into account when calculating the TER, by adding to the total operating costs any remuneration of the management company (or another party) that derives from such fee-sharing agreements.

There is no need to take into account fee-sharing arrangements on expenses that are already in the scope of the TER. Soft commissions should also be left outside the scope of the TER.

Thus:

- the remuneration of a management company through a fee-sharing agreement with a broker on transaction costs and with other fund management companies in the case of funds of funds (if this remuneration has not already been taken into account in the synthetic TER (see paragraph 6 below) or through other costs already charged to the fund and therefore directly includ-
<table>
<thead>
<tr>
<th>Total expense ratio (TER)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ed into the TER</strong> should anyway be taken into account in the TER,</td>
</tr>
<tr>
<td><strong>conversely,</strong> the remuneration of a management company through a fee-sharing agreement with a scheme (except when this remuneration falls under the scope of the specific fund-of-fund case covered in the previous indent) should not be taken into account.</td>
</tr>
</tbody>
</table>

5. **Performance fees:**

Performance fees should be included in the TER and should also be disclosed separately as a percentage of the average net asset value.

6. **Simplified prospectus scheme investing in UCITS scheme or in non-UCITS scheme:**

When a simplified prospectus scheme invests at least 10% of its net asset value in UCITS schemes or in schemes that are not UCITS schemes which publish a TER in accordance with this Annex, a synthetic TER corresponding to that investment should be disclosed.

The synthetic TER is equal to the ratio of:

- the simplified prospectus scheme's total operating costs expressed by its TER and all the costs borne by the scheme through holdings in underlying funds (i.e. those expressed by the TER of the underlying funds weighted on the basis of the simplified prospectus scheme's investment proportion), plus the subscription and redemption fees of these underlying funds, divided by the average net assets of the scheme.

As mentioned in the previous subparagraph, subscription fees and redemption fees of the underlying funds should be included in the TER. Subscription and redemption fees may not be charged when the underlying funds belong to the same group in accordance with Article 24 (3) of the UCITS Directive.

When any of the underlying schemes that are not UCITS schemes does not publish a TER in accordance with this Annex, disclosure of costs should be adapted in the following way:

- the impossibility of calculating the synthetic TER for that fraction of the investment must be disclosed,
- the maximum proportion of management fees charged to the underlying fund(s) must be disclosed in the simplified prospectus,
Total expense ratio (TER)

- A synthetic figure of total expected costs must be disclosed, by calculating:
  - A truncated synthetic TER incorporating the TER of each of those underlying funds for which the TER is calculated according to this Annex, weighted on the basis of the simplified prospectus scheme’s investment proportion, and by adding, for each of the other underlying funds, the subscription and redemption fees plus the best available maximum estimate of TER-eligible costs. This should include the maximum management fee and the last available performance fee for that fund, weighted on the basis of the simplified prospectus scheme’s investment proportion.

7. Umbrella funds/multiclass funds:

In the case of umbrella funds, the TER should be calculated for each sub-fund. If, in the case of multiclass funds, the TER differs between different share classes, a separate TER should be calculated and disclosed for each share class. Furthermore, in keeping with the principle of equality among investors, where there are differences in fees and expenses across classes, these different fees/expenses should be disclosed separately in the simplified prospectus. An additional statement should indicate that the objective criteria (e.g. the amount of subscription), on which these differences are based, are available in the full prospectus.

Notes:

1. This Annex sets out the requirements in relation to the TER. It reproduces, and adapts where appropriate for the purposes of the Simplified Prospectus provisions, Annex 1 to Commission Recommendation

The non-exhaustive typology of calculation bases referred to in paragraph 2(b) below reflects the diversity of recent commercial practice across Member States (at the end of 2003) and should not be interpreted as a general validation of the compliance of any individual agreement or commission with the provisions of the Handbook.
Portfolio turnover calculation

Note:

This Annex sets out the requirements in relation to the portfolio turnover rate. It reproduces Annex II to Commission Recommendation (2004/384/EC), amplifying Schedule C (Contents of the simplified prospectus) to the Management Company Directive (2004/107/EC). This table also includes other material which the FCA considers should be included.

Portfolio turnover rate

A simplified prospectus scheme's or, where relevant, a compartment's (sub-fund's) portfolio turnover rate must be calculated in the following way:

Purchases of securities = X
Sales of securities = Y
Total 1 = total of transactions in securities = X + Y
Issues/Subscriptions of units of the scheme = S
Cancellations/Redemptions of units of the scheme = T
Total 2 = Total transactions in units of the scheme = S + T
Reference average of total net assets = M
Turnover = [(Total 1 - Total 2)/M]*100

The reference average of total net assets corresponds to the average of net asset values calculated with the same frequency as under Annex 1 to this chapter. The portfolio turnover rate disclosed should correspond to the period(s) for which a TER is disclosed. The simplified prospectus should in any case include a clear reference to an information source (e.g. the scheme's website) where the investor may obtain previous periods' performance.

Note

Firms should note that inclusion of the portfolio turnover rate in the simplified prospectus is mandatory. The rate must be calculated according to the formula which is prescribed above. However, because the rate includes both purchases and sales of securities, readers may find it difficult to understand. Consequently firms should consider including an explanation of the formula, such as:
\[(\text{Purchase of securities} + \text{Sales of securities}) - (\text{Subscription of units} + \text{Redemptions of units})\]

\[\text{(Average Fund Value over 12 months)} \times 100\]
Chapter 5

Investment and borrowing powers
5.1 Introduction

Application

(1) Subject to 1(A), COLL 5.1 to COLL 5.5 apply to the authorised fund manager and the depositary of an authorised fund, and to an ICVC, which is or ever has been a UCITS scheme.

(1A) The only sections of COLL 5 that apply to the authorised fund manager and the depositary of a feeder UCITS, and to an ICVC which is a feeder UCITS, are COLL 5.3 and COLL 5.8, although particular rules in COLL 5.1, COLL 5.2 and COLL 5.5 are incorporated by reference.

(2) Subject to 2(A), COLL 5.1, COLL 5.4 and COLL 5.6 apply to the authorised fund manager and depositary of an authorised fund, and to an ICVC, which is a non-UCITS retail scheme.

(2A) COLL 5.1, COLL 5.4 and COLL 5.7 apply to the authorised fund manager and the depositary of an authorised fund and to an ICVC which is a non-UCITS retail scheme operating as a fund of alternative investment funds.

(3) Paragraphs (2) and (2A) cease to apply if a non-UCITS retail scheme converts to be authorised as a UCITS scheme.

(4) COLL 5.9 applies to the authorised fund manager and the depositary of an authorised fund which is a UCITS scheme or a non-UCITS retail scheme operating as a money market fund or a short-term money market fund.

Purpose

(1) This chapter helps in achieving the statutory objective of protecting consumers by laying down minimum standards for the investments that may be held by an authorised fund. In particular:

(a) the proportion of transferable securities and derivatives that may be held by an authorised fund is restricted if those transferable securities and derivatives are not listed on an eligible market; the intention of this is to restrict investment in transferable securities or derivatives that cannot be accurately valued and readily disposed of; and
(b) authorised funds are required to comply with a number of investment rules that require the spreading of risk.

(2) Table 5.1.4G gives an overview of the permissible investments and maximum investment limits for UCITS schemes and non-UCITS retail schemes.

TREATMENT OF OBLIGATIONS

(1) Where a rule in this chapter allows a transaction to be entered into or an investment to be retained only if possible obligations arising out of the transaction or out of the retention would not cause the breach of any limits in this chapter, it must be assumed that the maximum possible liability of the authorised fund under any other of those rules has also to be provided for.

(2) Where a rule in this chapter permits a transaction to be entered into or an investment to be retained only if that transaction, or the retention, or other similar transactions, are covered:

(a) it must be assumed that in applying any of those rules, the authorised fund must also simultaneously satisfy any other obligation relating to cover; and

(b) no element of cover must be used more than once.

INDICATIVE OVERVIEW OF INVESTMENT AND BORROWING POWERS

This table belongs to COLL 5.1.2 G (2).

<table>
<thead>
<tr>
<th>Scheme investments and investment techniques</th>
<th>Limits for UCITS schemes</th>
<th>Limits for non-UCITS retail schemes</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Permissible investment</td>
<td>Maximum limit</td>
</tr>
<tr>
<td>Approved securities</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Transferable securities that are not approved securities</td>
<td>Yes</td>
<td>10%</td>
</tr>
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<td>Government and public securities</td>
<td>Yes</td>
<td>None</td>
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<tr>
<td>Regulated schemes other than qualified investor schemes</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Unregulated schemes and qualified investor schemes</td>
<td>No</td>
<td>N/A</td>
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<tr>
<td>Warrants</td>
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<td>None</td>
</tr>
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<td>Investment trusts</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Deposits</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Derivatives</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Immovables (i.e real property)</td>
<td>No</td>
<td>N/A</td>
</tr>
<tr>
<td>Gold</td>
<td>No</td>
<td>N/A</td>
</tr>
</tbody>
</table>
### Scheme investments and investment techniques

<table>
<thead>
<tr>
<th>Scheme investments and investment techniques</th>
<th>Limits for UCITS schemes</th>
<th>Limits for non-UCITS retail schemes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hedging</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Stock lending</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Underwriting</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td>Borrowing</td>
<td>Yes 10% (T)</td>
<td>Yes 10%</td>
</tr>
<tr>
<td>Cash and near cash</td>
<td>Yes</td>
<td>None</td>
</tr>
</tbody>
</table>

**Note:**
- A percentage: an upper limit (though there may be limits of other kinds).
- "(T)" temporary only - see COLL 5.5.4R(4)
- "N/A" Not applicable
- "(C)" In the case of a non-UCITS retail scheme operating as a FAIF there is no maximum limit - see COLL 5.7.7 R.
5.2 General investment powers and limits for UCITS schemes

Application

(1) This section applies to an ICVC, an ACD, a manager of an AUT, a depositary of an ICVC and a trustee of an AUT, where such ICVC or AUT is a UCITS scheme, in accordance with COLL 5.2.2 R (Table of application).

(2) COLL 5.2.23C R (Valuation of OTC derivatives) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

Table of application

This table belongs to COLL 5.2.1 R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Manager of an AUT</th>
<th>Depositary of an ICVC</th>
<th>Trustee of an AUT</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.3R to 5.2.9R</td>
<td> </td>
<td>x</td>
<td> </td>
<td>x</td>
<td> </td>
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<tr>
<td>5.2.9AR</td>
<td> </td>
<td>x</td>
<td> </td>
<td>x</td>
<td> </td>
</tr>
<tr>
<td>5.2.10R(1)</td>
<td> </td>
<td>x</td>
<td> </td>
<td>x</td>
<td> </td>
</tr>
<tr>
<td>5.2.10R(2)(a) &amp; (b)</td>
<td> </td>
<td>x</td>
<td> </td>
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<tr>
<td>5.2.10R(2)(c)</td>
<td> </td>
<td>x</td>
<td> </td>
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</tr>
<tr>
<td>5.2.10R(3)</td>
<td> </td>
<td>x</td>
<td> </td>
<td>x</td>
<td> </td>
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<tr>
<td>5.2.10AR to 5.2.10EG</td>
<td> </td>
<td>x</td>
<td> </td>
<td>x</td>
<td> </td>
</tr>
<tr>
<td>5.2.11R to 5.2.21R</td>
<td> </td>
<td>x</td>
<td> </td>
<td>x</td>
<td> </td>
</tr>
<tr>
<td>5.2.22R</td>
<td> </td>
<td>x</td>
<td> </td>
<td>x</td>
<td> </td>
</tr>
<tr>
<td>5.2.22AG</td>
<td> </td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
<tr>
<td>5.2.23R(1)</td>
<td> </td>
<td>x</td>
<td>x</td>
<td>x</td>
<td>x</td>
</tr>
</tbody>
</table>
In addition to the parts of CESR’s UCITS eligible assets guidelines specifically referred to in this section, the authorised fund manager of a UCITS scheme should have regard to the other parts of those guidelines when applying the rules in this section. CESR’s UCITS eligible assets guidelines are available at www.fca.org.uk/your-fca.

Prudent spread of risk

(1) An authorised fund manager must ensure that, taking account of the investment objectives and policy of the UCITS scheme as stated in the most recently published prospectus, the scheme property of the UCITS scheme aims to provide a prudent spread of risk.

(2) The rules in this section relating to spread of investments do not apply until the expiry of a period of six months after the date of which the authorisation order, in respect of the UCITS scheme, takes effect or on which the initial offer commenced, if later, provided that (1) is complied with during such period.

Investment powers: general

The scheme property of each UCITS scheme must be invested only in accordance with the relevant provisions in sections COLL 5.2 to COLL 5.5 that are applicable to that UCITS scheme and up to any maximum limit so stated, but, the instrument constituting the scheme may further restrict:

(1) the kind of property in which the scheme property may be invested;
(2) the proportion of the capital property of the UCITS scheme be invested in assets of any description;

(3) the descriptions of transactions permitted; and

(4) the borrowing powers of the UCITS scheme.

**Valuation**

5.2.5

(1) In this chapter, the value of the scheme property of a UCITS scheme means the net value determined in accordance with ■ COLL 6.3 (Valuation and pricing), after deducting any outstanding borrowings, whether immediately due to be repaid or not.

(2) When valuing the scheme property for the purposes of this chapter:

(a) the time as at which the valuation is being carried out ("the relevant time") is treated as if it were a valuation point, but the valuation and the relevant time do not count as a valuation or a valuation point for the purposes of ■ COLL 6.3 (Valuation and pricing);

(b) initial outlay is to be regarded as remaining part of the scheme property; and

(c) if the authorised fund manager, having taken reasonable care, determines that the UCITS scheme will become entitled to any unrealised profit which has been made on account of a transaction in derivatives, that prospective entitlement is to be regarded as part of the scheme property.

(3) When valuing the scheme property of a dual-priced authorised fund, the cancellation basis of valuation referred to in ■ COLL 6.3.3 R (2) (Valuation) is to be applied.

**Valuation guidance**

5.2.6

FCA

It should be noted that for the purpose of ■ 5.2.5 R, ■ 6.3 may be affected by specific provisions in this chapter such as, for example, ■ 5.4.6 R (Treatment of collateral).

**UCITS schemes: permitted types of scheme property**

5.2.6A

FCA

The scheme property of a UCITS scheme must, except where otherwise provided in the rules in this chapter, consist solely of any or all of:

(1) transferable securities;

(2) approved money-market instruments;

(3) units in collective investment schemes;
(4) derivatives and forward transactions;

(5) deposits; and

(6) (for an ICVC) movable and immovable property that is essential for the direct pursuit of the ICVC’s business;

in accordance with the rules in this section.

[Note: articles 50(1) (in conjunction with other rules in this section) and 50(3) of the UCITS Directive]

### Transferable securities

1. A transferable security is an investment which is any of the following:
   - a share;
   - a debenture;
   - an alternative debenture;
   - a government and public security;
   - a warrant; or
   - a certificate representing certain securities.

2. An investment is not a transferable security if the title to it cannot be transferred, or can be transferred only with the consent of a third party.

3. In applying (2) to an investment which is issued by a body corporate, and which is a share or a debenture, the need for any consent on the part of the body corporate or any members or debenture holders of it may be ignored.

4. An investment is not a transferable security unless the liability of the holder of it to contribute to the debts of the issuer is limited to any amount for the time being unpaid by the holder of it in respect of the investment.

### Investment in transferable securities

1. A UCITS scheme may invest in a transferable security only to the extent that the transferable security fulfils the following criteria:
   - the potential loss which the UCITS scheme may incur with respect to holding the transferable security is limited to the amount paid for it;
   - its liquidity does not compromise the ability of the authorised fund manager to comply with its obligation to
redeem units at the request of any qualifying unitholder (see COLL 6.2.16 R (3));

(c) reliable valuation is available for it as follows:

(i) in the case of a transferable security admitted to or dealt in on an eligible market, where there are accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;

(ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is a valuation on a periodic basis which is derived from information from the issuer of the transferable security or from competent investment research;

(d) appropriate information is available for it as follows:

(i) in the case of a transferable security admitted to or dealt in on an eligible market, where there is regular, accurate and comprehensive information available to the market on the transferable security or, where relevant, on the portfolio of the transferable security;

(ii) in the case of a transferable security not admitted to or dealt in on an eligible market, where there is regular and accurate information available to the authorised fund manager on the transferable security or, where relevant, on the portfolio of the transferable security;

(e) it is negotiable; and

(f) its risks are adequately captured by the risk management process of the authorised fund manager.

(2) Unless there is information available to the authorised fund manager that would lead to a different determination, a transferable security which is admitted to or dealt in on an eligible market shall be presumed:

(a) not to compromise the ability of the authorised fund manager to comply with its obligation to redeem units at the request of any qualifying unitholder; and

(b) to be negotiable.

[Note: article 2(1) of the UCITS eligible assets Directive]

Where the authorised fund manager considers that the liquidity or negotiability of a transferable security might compromise the ability of the authorised fund manager to comply with its obligation to redeem units at the request of any qualifying unitholder, it should assess the liquidity risk in accordance with CESR’s UCITS eligible assets guidelines with respect to article 2(1) of the UCITS eligible assets Directive.
Closed end funds constituting transferable securities

A unit in a closed end fund shall be taken to be a transferable security for the purposes of investment by a UCITS scheme, provided it fulfils the criteria for transferable securities set out in COLL 5.2.7A R, and either:

(1) where the closed end fund is constituted as an investment company or a unit trust:
   (a) it is subject to corporate governance mechanisms applied to companies; and
   (b) where another person carries out asset management activity on its behalf, that person is subject to national regulation for the purpose of investor protection; or

(2) where the closed end fund is constituted under the law of contract:
   (a) it is subject to corporate governance mechanisms equivalent to those applied to companies; and
   (b) it is managed by a person who is subject to national regulation for the purpose of investor protection.

[Note: articles 2(2)(a) and (b) of the UCITS eligible assets Directive]

(1) An authorised fund manager should not invest the scheme property of a UCITS scheme in units of a closed end fund for the purpose of circumventing the investment limits set down in this section.

(2) When required to assess whether the corporate governance mechanisms of a closed end fund in contractual form are equivalent to those applied to companies, the authorised fund manager should consider whether the contract on which the closed end fund is based provides its investors with rights to:
   (a) vote on the essential decisions of the closed end fund (including appointment and removal of asset management company, amendment to the contract which set up the closed end fund, modification of investment policy, merger, liquidation); and
   (b) control the investment policy of the closed end fund through appropriate mechanisms.

(3) The assets of the closed end fund in contractual form should be separate and distinct from those of the asset manager and the closed end fund should be subject to liquidation rules that adequately protect its investors.

[Note: CESR’s UCITS eligible assets guidelines with respect to articles 2(2) and 2(2)(b)(ii) of the UCITS eligible assets Directive]
Transferable securities linked to other assets

(1) A UCITS scheme may invest in any other investment which shall be taken to be a transferable security for the purposes of investment by a UCITS scheme provided the investment:

   (a) fulfils the criteria for transferable securities set out in COLL 5.2.7A R; and

   (b) is backed by or linked to the performance of other assets, which may differ from those in which a UCITS scheme can invest.

(2) Where an investment in (1) contains an embedded derivative component (see COLL 5.2.19 R (3A)), the requirements of this section with respect to derivatives and forwards will apply to that component.

[Note: articles 2(2)(c) and 2(3) of the UCITS eligible assets Directive]

Approved money-market instruments

An approved money-market instrument is a money-market instrument which is normally dealt in on the money market, is liquid and has a value which can be accurately determined at any time.

[Note: article 2(1)(o) of the UCITS Directive]

A money-market instrument shall be regarded as normally dealt in on the money market if it:

(1) has a maturity at issuance of up to and including 397 days;

(2) has a residual maturity of up to and including 397 days;

(3) undergoes regular yield adjustments in line with money market conditions at least every 397 days; or

(4) has a risk profile, including credit and interest rate risks, corresponding to that of an instrument which has a maturity as set out in (1) or (2) or is subject to yield adjustments as set out in (3).

[Note: article 3(2) of the UCITS eligible assets Directive]

A money-market instrument shall be regarded as liquid if it can be sold at limited cost in an adequately short time frame, taking into account the obligation of the authorised fund manager to redeem units at the request of any qualifying unitholder (see COLL 6.2.16 R (3)).

(2) A money-market instrument shall be regarded as having a value which can be accurately determined at any time if accurate and
reliable valuations systems, which fulfil the following criteria, are available:

(a) enabling the authorised fund manager to calculate a net asset value in accordance with the value at which the instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction; and

(b) based either on market data or on valuation models including systems based on amortised costs.

(3) A money-market instrument that is normally dealt in on the money market and is admitted to or dealt in on an eligible market shall be presumed to be liquid and have a value which can be accurately determined at any time unless there is information available to the authorised fund manager that would lead to a different determination.

[Note: article 4 of the UCITS eligible assets Directive]

Guidance on assessing liquidity and quality of money-market instruments

(1) The authorised fund manager should assess the liquidity of a money-market instrument in accordance with CESR’s UCITS eligible assets guidelines with respect to article 4(1) of the UCITS eligible assets Directive.

(2) Where an approved money-market instrument forms part of the scheme property of a qualifying money market fund, short-term money market fund or money market fund, the authorised fund manager should adequately monitor that the instrument continues to be of high quality, taking into account both its credit risk and its final maturity.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 4(2) of the UCITS eligible assets Directive. Paragraph 11 of CESR’s guidelines on a common definition of European money market funds.]

Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market

(1) [deleted]

(2) [deleted]

(3) Transferable securities and approved money-market instruments held within a UCITS scheme must be:

(a) admitted to or dealt in on an eligible market within COLL 5.2.10 R (1)(a) (Eligible markets: requirements); or

(b) dealt in on an eligible market within COLL 5.2.10 R (1)(b); or

(c) admitted to or dealt in on an eligible market within COLL 5.2.10 R (2); or
(d) for an approved money-market instrument not admitted to or dealt in on an eligible market, within COLL 5.2.10A R (1); or

(e) recently issued transferable securities, provided that:

(i) the terms of issue include an undertaking that application will be made to be admitted to an eligible market; and

(ii) such admission is secured within a year of issue.

(4) However, a UCITS scheme may invest no more than 10% of the scheme property in transferable securities and approved money-market instruments other than those referred to in (3).

[Note: article 50(1)(a)-(d) and (h) and (2)(a) of the UCITS Directive and article 3(1) of the UCITS eligible assets Directive]

Eligible markets regime: purpose

(1) This section specifies criteria based on those in article 50 of the UCITS Directive, as to the nature of the markets in which the property of a UCITS scheme may be invested.

(2) Where a market ceases to be eligible, investments on that market cease to be approved securities. The 10% restriction in COLL 5.2.8 R (4) applies, and exceeding this limit because a market ceases to be eligible will generally be regarded as a breach beyond the control of the authorised fund manager.

The ability to hold up to 10% of the scheme property in ineligible assets under COLL 5.2.8 R (4) is subject to the following limitations:

(1) for a qualifying money market fund, the 10% restriction is limited to high quality money market instruments with a maturity or residual maturity of not more than 397 days, or regular yield adjustments consistent with such a maturity, and with a weighted average maturity of no more than 60 days;

(2) for a short-term money market fund or a money market fund, the 10% restriction is limited to high quality approved money-market instruments as determined under COLL 5.9.6 R (High quality money market instruments).

Eligible markets: requirements

(1) A market is eligible for the purposes of the rules in this sourcebook if it is:

(a) a regulated market;

(b) a market in an EEA State which is regulated, operates regularly and is open to the public; or

(c) any market within (2).
(2) A market not falling within (1)(a) and (b) is eligible for the purposes of the rules in this sourcebook if:

(a) the authorised fund manager, after consultation with and notification to the depositary (and in the case of an ICVC, any other directors), decides that market is appropriate for investment of, or dealing in, the scheme property;

(b) the market is included in a list in the prospectus; and

(c) the depositary has taken reasonable care to determine that:

(i) adequate custody arrangements can be provided for the investment dealt in on that market; and

(ii) all reasonable steps have been taken by the authorised fund manager in deciding whether that market is eligible.

(3) In (2)(a), a market must not be considered appropriate unless it:

(a) is regulated;

(b) operates regularly;

(c) is recognised as a market or exchange or as a self-regulating organisation by an overseas regulator;

(d) is open to the public;

(e) is adequately liquid; and

(f) has adequate arrangements for unimpeded transmission of income and capital to or to the order of investors.

Money-market instruments with a regulated issuer

(1) (In addition to instruments admitted to or dealt in on an eligible market) a UCITS scheme may invest in an approved money-market instrument provided it fulfils the following requirements:

(a) the issue or the issuer is regulated for the purpose of protecting investors and savings; and

(b) the instrument is issued or guaranteed in accordance with COLL 5.2.10B R.

[Note: article 50(1)(h)(i) to (iii) of the UCITS Directive]

(2) The issue or the issuer of a money-market instrument, other than one dealt in on an eligible market, shall be regarded as regulated for the purpose of protecting investors and savings if:

(a) the instrument is an approved money-market instrument;
(b) appropriate information is available for the instrument (including information which allows an appropriate assessment of the credit risks related to investment in it), in accordance with COLL 5.2.10C R; and

(c) the instrument is freely transferable.

[Note: article 5(1) of the UCITS eligible assets Directive]

Issuers and guarantors of money-market instruments

(1) A UCITS scheme may invest in an approved money-market instrument if it is:

(a) issued or guaranteed by any one of the following:
   (i) a central authority of an EEA State or, if the EEA State is a federal state, one of the members making up the federation;
   (ii) a regional or local authority of an EEA State;
   (iii) the European Central Bank or a central bank of an EEA State;
   (iv) the European Union or the European Investment Bank;
   (v) a non-EEA State or, in the case of a federal state, one of the members making up the federation;
   (vi) a public international body to which one or more EEA States belong; or

(b) issued by a body, any securities of which are dealt in on an eligible market; or

(c) issued or guaranteed by an establishment which is:
   (i) subject to prudential supervision in accordance with criteria defined by EU law; or
   (ii) subject to and complies with prudential rules considered by the FCA to be at least as stringent as those laid down by EU law.

(2) An establishment shall be considered to satisfy the requirement in (1)(c)(ii) if it is subject to and complies with prudential rules, and fulfils one or more of the following criteria:

(a) it is located in the European Economic Area;

(b) it is located in an OECD country belonging to the Group of Ten;

(c) it has at least investment grade rating;
on the basis of an in-depth analysis of the issuer, it can be demonstrated that the prudential rules applicable to that issuer are at least as stringent as those laid down by EU law.

[Note: article 6 of the UCITS eligible assets Directive]

Appropriate information for money-market instruments

(1) In the case of an approved money-market instrument within COLL 5.2.10B R (1)(b) or issued by a body of the type referred to in COLL 5.2.10E G; or which is issued by an authority within COLL 5.2.10B R (1)(a)(ii) or a public international body within COLL 5.2.10B R (1)(a)(vi) but is not guaranteed by a central authority within COLL 5.2.10B R (1)(a)(i), the following information must be available:

(a) information on both the issue or the issuance programme, and the legal and financial situation of the issuer prior to the issue of the instrument, verified by appropriately qualified third parties not subject to instructions from the issuer;

(b) updates of that information on a regular basis and whenever a significant event occurs; and

(c) available and reliable statistics on the issue or the issuance programme.

(2) In the case of an approved money-market instrument issued or guaranteed by an establishment within COLL 5.2.10B R (1)(c), the following information must be available:

(a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the instrument;

(b) updates of that information on a regular basis and whenever a significant event occurs; and

(c) available and reliable statistics on the issue or the issuance programme, or other data enabling an appropriate assessment of the credit risks related to investment in those instruments.

(3) In the case of an approved money-market instrument:

(a) within COLL 5.2.10B R (1)(a)(i), (iv) or (v); or

(b) which is issued by an authority within COLL 5.2.10B R (1)(a)(ii) or a public international body within COLL 5.2.10B R (1)(a)(vi) and is guaranteed by a central authority within COLL 5.2.10B R (1)(a)(i);
information must be available on the issue or the issuance programme, or on the legal and financial situation of the issuer prior to the issue of the instrument.

[Note: articles 5(2), (3) and (4) of the UCITS eligible assets Directive]

(1) The appropriately qualified third parties referred to in COLL 5.2.10C R (1)(a) should specialise in the verification of legal or financial documentation and be composed of persons meeting professional standards of integrity.

(2) The regular updates of information referred to in COLL 5.2.10C R (1)(b) and (2)(b) should normally occur on at least an annual basis.

[Note: CESR’s UCITS eligible assets guidelines with respect to articles 5(2)(b) and (c) of the UCITS eligible assets Directive]

Other money-market instruments with a regulated issuer

(1) In addition to instruments admitted to or dealt in on an eligible market, a UCITS scheme may also with the express consent of the FCA (which takes the form of a waiver under sections 138A and 138B of the Act as applied by section 250 of the Act or regulation 7 of the OEIC Regulations) invest in an approved money-market instrument provided:

(a) the issue or issuer is itself regulated for the purpose of protecting investors and savings in accordance with COLL 5.2.10A R (2);

(b) investment in that instrument is subject to investor protection equivalent to that provided by instruments which satisfy the requirements of COLL 5.2.10B R (1)(a), (b) or COLL 5.2.10B R (1)(c); and

(c) the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with Directive 78/660/EEC, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

(2) A securitisation vehicle is a structure, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.

(3) A banking liquidity line is a banking facility secured by a financial institution which is an establishment subject to prudential supervision in accordance with criteria defined by EU law or an establishment which is subject to and complies with prudential rules considered by the FCA (in accordance with COLL 5.2.10B R (2)) to be at least as stringent as those laid down by EU law.

[Note: article 50(1)(h)(iv) of the UCITS Directive and article 7 of the UCITS eligible assets Directive]

Spread: general

(1) This rule does not apply to government and public securities.
(2) For the purposes of this rule companies included in the same group for the purposes of consolidated accounts as defined in accordance with the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts or, in the same group in accordance with international accounting standards, are regarded as a single body.

(3) Not more than 20% in value of the scheme property is to consist of deposits with a single body.

(4) Not more than 5% in value of the scheme property is to consist of transferable securities or approved money-market instruments issued by any single body.

(5) The limit of 5% in (4) is raised to 10% in respect of up to 40% in value of the scheme property. Covered bonds need not be taken into account for the purpose of applying the limit of 40%.

(5A) The limit of 5% in (4) is raised to 25% in value of the scheme property in respect of covered bonds, provided that when a UCITS scheme invests more than 5% in covered bonds issued by a single body, the total value of covered bonds held must not exceed 80% in value of the scheme property.

(6) In applying (4) and (5), certificates representing certain securities are to be treated as equivalent to the underlying security.

(7) The exposure to any one counterparty in an OTC derivative transaction must not exceed 5% in value of the scheme property; this limit being raised to 10% where the counterparty is an approved bank.

(8) Not more than 20% in value of the scheme property is to consist of transferable securities and approved money-market instruments issued by the same group (as referred to in (2)).

(9) Not more than 20% in value of the scheme is to consist of the units of any one collective investment scheme.

(10) In applying the limits in (3), (4), (5), (6) and (7), and subject to (5A), not more than 20% in value of the scheme property is to consist of any combination of two or more of the following:

(a) transferable securities (including covered bonds) or approved money-market instruments issued by; or

(b) deposits made with; or
(c) exposures from OTC derivatives transactions made with a single body.

(11) [deleted]

(12) [deleted]

(13) [deleted]

(14) [deleted]

[Note: article 52 of the UCITS Directive]

Guidance on spread: general

(1) [deleted]

(2) [deleted]

(3) In applying the spread limit of 20% in value of scheme property which may consist of deposits with a single body, all uninvested cash comprising capital property that the depositary holds should be included in calculating the total sum of the deposits held by it and other companies in its group on behalf of the scheme.

Counterparty risk and issuer concentration

(1) An authorised fund manager of a UCITS scheme must ensure that counterparty risk arising from an OTC derivative transaction is subject to the limits set out in COLL 5.2.11 R (7) and COLL 5.2.11 R (10).

(2) When calculating the exposure of a UCITS scheme to a counterparty in accordance with the limits in COLL 5.2.11 R (7), the authorised fund manager must use the positive mark-to-market value of the OTC derivative contract with that counterparty.

(3) An authorised fund manager may net the OTC derivative positions of a UCITS scheme with the same counterparty, provided:

(a) it is able legally to enforce netting agreements with the counterparty on behalf of the UCITS scheme; and

(b) the netting agreements in (a) do not apply to any other exposures the UCITS scheme may have with that same counterparty.

(4) An authorised fund manager of a UCITS scheme may reduce the exposure of the scheme property to a counterparty to an OTC derivative transaction through the receipt of collateral. Collateral
received must be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.

(5) An authorised fund manager of a UCITS scheme must take collateral into account in calculating exposure to counterparty risk in accordance with the limits in COLL 5.2.11B R (7) when it passes collateral to the counterparty to an OTC derivative transaction on behalf of the UCITS scheme.

(6) Collateral passed in accordance with (5) may be taken into account on a net basis only if the authorised fund manager is able legally to enforce netting arrangements with this counterparty on behalf of the UCITS scheme.

(7) An authorised fund manager of a UCITS scheme must calculate the issuer concentration limits referred to in COLL 5.2.11 R on the basis of the underlying exposure created through the use of OTC derivatives in accordance with the commitment approach.

(8) In relation to exposures arising from OTC derivative transactions, as referred to in COLL 5.2.11 R (10), the authorised fund manager must include in the calculation any counterparty risk relating to the OTC derivative transactions.

[Note: article 43 of the UCITS implementing Directive]

spread: government and public securities

(1) This rule applies to government and public securities ("such securities").

(2) Where no more than 35% in value of the scheme property is invested in such securities issued by any one body, there is no limit on the amount which may be invested in such securities or in any one issue.

(3) An authorised fund may invest more than 35% in value of the scheme property in such securities issued by any one body provided that:

(a) the authorised fund manager has before any such investment is made consulted with the depositary and as a result considers that the issuer of such securities is one which is appropriate in accordance with the investment objectives of the authorised fund;

(b) no more than 30% in value of the scheme property consists of such securities of any one issue;

the scheme property includes such securities issued by that or another issuer, of at least six different issues; and the disclosures in (4) have been made.
(4) Where it is intended that (3) may apply, the instrument constituting the scheme, and the most recently published prospectus, must prominently state:

(a) the fact that more than 35% of the scheme property is or may be invested in such securities issued by one issuer; and

(b) the names of the individual states, the local authorities or public international bodies issuing such securities in which the authorised fund may invest over 35% of its assets.

(5) In this rule in relation to such securities:

(a) issue, issued and issuer include guarantee, guaranteed and guarantor; and

(b) an issue differs from another if there is a difference as to repayment date, rate of interest, guarantor or other material terms of the issue.

(6) Notwithstanding ■COLL 5.2.11 R (1) and subject to ■(2) and ■(3), in applying the 20% limit in ■COLL 5.2.11 R (10) with respect to a single body, government and public securities issued by that body shall be taken into account.

**Investment in collective investment schemes**

A UCITS scheme must not invest in units in a collective investment scheme ("second scheme") unless the second scheme satisfies all of the following conditions, and provided that no more than 30% of the value of the UCITS scheme is invested in second schemes within (1)(b) to (e):

(1) the second scheme must:

(a) satisfy the conditions necessary for it to enjoy the rights conferred by the UCITS Directive; or

(b) be recognised under the provisions of section 270 of the Act (Schemes authorised in designated countries or territories); or

(c) be authorised as a non-UCITS retail scheme (provided the requirements of article 50(1)(e) of the UCITS Directive are met); or

(d) be authorised in another EEA State (provided the requirements of article 50(1)(e) of the UCITS Directive are met); or

(e) be authorised by the competent authority of an OECD member country (other than another EEA State) which has:

(i) signed the IOSCO Multilateral Memorandum of Understanding; and
(ii) approved the scheme’s management company, rules and depositary/custody arrangements;

(provided the requirements of article 50(1)(e) of the UCITS Directive are met);

(2) the second scheme must comply, where relevant, with

■ COLL 5.2.15 R (Investment in associated collective investment schemes) and ■ COLL 5.2.16 R (Investment in other group schemes);

(3) the second scheme must have terms which prohibit more than 10% in value of the scheme property consisting of units in collective investment schemes; and

(4) where the second scheme is an umbrella, the provisions in (2) and (3) and ■ COLL 5.2.11 R (Spread: general) apply to each sub-fund as if it were a separate scheme.

Qualifying non-UCITS collective investment schemes

(1) ■ COLL 9.3 gives further detail as to the recognition of a scheme under section 270 of the Act.

(2) Article 50 of the UCITS Directive sets out the general investment limits. So, a non-UCITS retail scheme, or its equivalent EEA scheme which has the power to invest in gold or immovables would not meet the criteria set in ■ COLL 5.2.13 R (1)(c) and ■ COLL 5.2.13 R (1)(d).

(3) In determining whether a scheme meets the requirements of article 50(1)(e) of the UCITS Directive for the purposes of ■ COLL 5.2.13R (1)(d) or ■ COLL 5.2.13R (1)(e), the authorised fund manager should consider the following factors before deciding that the scheme provides a level of protection for unitholders which is equivalent to that provided to unitholders in a UCITS scheme:

(a) the rules guaranteeing the autonomy of the scheme and management in the exclusive interest of the unitholders;

(b) the existence of an independent depositary/custodian with similar duties and responsibilities in relation to both safekeeping and supervision; where an independent depositary/custodian is not a requirement of local law as regards collective investment schemes, robust governance structures may provide a suitable alternative;

(c) the availability of pricing information and reporting requirements;

(d) redemption facilities and frequency;

(e) restrictions in relation to dealings by related parties;

(f) the extent of asset segregation; and

(g) the local requirements for borrowing, lending and uncovered sales of transferable securities and money market instruments regarding the portfolio of the scheme.
[Note: article 26 of CESR’s UCITS eligible assets guidelines with respect to article 50(1)(e) of the UCITS Directive]

(4) The requirement for supervisory equivalence, as described in article 50(1)(e) (first indent) of the UCITS Directive, also applies to schemes (that are not UCITS schemes) established in other EEA States. In considering whether the second scheme satisfies this requirement, the authorised fund manager should have regard to the first section of article 26 of CESR’s UCITS eligible assets guidelines.

Investment in associated collective investment schemes

(1) A UCITS scheme must not invest in or dispose of units in another collective investment scheme (the second scheme) if the second scheme is managed or operated by (or, for an ICVC, whose ACD is) the authorised fund manager of the investing UCITS scheme or an associate of that authorised fund manager, unless:

(a) the prospectus of the investing UCITS scheme clearly states that the property of that investing scheme may include such units; and

(b) COLL 5.2.16 R (Investment in other group schemes) is complied with.

(2) Where a sub-fund of a UCITS scheme which is an umbrella invests in or disposes of units in another sub-fund of the same umbrella (the second sub-fund), the requirement in:

(a) COLL 5.2.15R (1)(a) is modified as follows - the prospectus of the umbrella must clearly state that the scheme property attributable to the investing or disposing sub-fund may include units in another sub-fund of the same umbrella; and

(b) COLL 5.2.15R (1)(b) is modified as follows - COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "UCITS scheme" are taken to be references to the investing or disposing sub-fund and references to the "second scheme" are taken to be references to the second sub-fund.

Investment in other group schemes

(1) Where:

(a) an investment or disposal is made under COLL 5.2.15 R; and

(b) there is a charge in respect of such investment or disposal;

the authorised fund manager of the UCITS scheme making the investment or disposal must pay the UCITS scheme the amounts referred to in (2) or (3) within four business days following the date of the agreement to invest or dispose.
Section 5.2 : General investment powers and limits for UCITS schemes

Coll 5 : Investment and borrowing powers

(R2) When an investment is made, the amount referred to in (1) is either:

(a) any amount by which the consideration paid by the UCITS scheme for the units in the second scheme exceeds the price that would have been paid for the benefit of the second scheme had the units been newly issued or sold by it; or

(b) if such price cannot be ascertained by the authorised fund manager of the authorised fund, the maximum amount of any charge permitted to be made by the seller of units in the second scheme.

(3) When a disposal is made, the amount referred to in (1) is any charge made for the account of the authorised fund manager or operator of the second scheme or an associate of any of them in respect of the disposal.

(4) In this rule:

(a) any addition to or deduction from the consideration paid on the acquisition or disposal of units in the second scheme, which is applied for the benefit of the second scheme and is, or is like, a dilution levy made in accordance with COLL 6.3.8 (Dilution) or SDRT provision made in accordance with COLL 6.3.7 (SDRT provision) is to be treated as part of the price of the units and not as part of any charge; and

(b) any charge made in respect of an exchange of units in one sub-fund or separate part of the second scheme for units in another sub-fund or separate part of that scheme is to be included as part of the consideration paid for the units.

5.2.17 FCA

(1) [deleted]

Investment in nil and partly paid securities

(2) A transferable security or an approved money-market instrument on which any sum is unpaid falls within a power of investment only if it is reasonably foreseeable that the amount of any existing and potential call for any sum unpaid could be paid by the UCITS scheme, at the time when payment is required, without contravening the rules in this chapter.

5.2.18 R [deleted]

Derivatives: general

(1) A transaction in derivatives or a forward transaction must not be effected for a UCITS scheme unless:

5.2.19 FCA
(a) the transaction is of a kind specified in COLL 5.2.20 R (Permitted transactions (derivatives and forwards)); and

(b) the transaction is covered, as required by COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).

(2) Where a UCITS scheme invests in derivatives, the exposure to the underlying assets must not exceed the limits in COLL 5.2.11 R (Spread: general) and COLL 5.2.12 R (Spread: government and public securities) save as provided in (4).

(3) Where a transferable security or approved money-market instrument embeds a derivative, this must be taken into account for the purposes of complying with this section.

(3A) (a) A transferable security or an approved money-market instrument will embed a derivative if it contains a component which fulfils the following criteria:

(i) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security or approved money-market instrument which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index or other variable, and therefore vary in a way similar to a stand-alone derivative;

(ii) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract; and

(iii) it has a significant impact on the risk profile and pricing of the transferable security or approved money-market instrument.

(b) A transferable security or an approved money-market instrument does not embed a derivative where it contains a component which is contractually transferable independently of the transferable security or the approved money-market instrument. That component shall be deemed to be a separate instrument.

[Note: article 10 of the UCITS eligible assets Directive]

(4) Where a scheme invests in an index based derivative, provided the relevant index falls within COLL 5.2.33 R (Relevant indices) the underlying constituents of the index do not have to be taken into account for the purposes of COLL 5.2.11 R and COLL 5.2.12 R.
(5) The relaxation in (4) is subject to the **authorised fund manager** taking account of \[\text{COLL 5.2.3 R (Prudent spread of risk)}\].

**Guidance on transferable securities and money-market instruments embedding derivatives**

(1) Collateralised debt obligations (CDOs) or asset-backed securities using *derivatives*, with or without an active management, will generally not be considered as embedding a *derivative* except if:

(a) they are leveraged, i.e. the CDOs or asset-backed securities are not limited recourse vehicles and the investors’ loss can be higher than their initial investment; or

(b) they are not sufficiently diversified.

(2) Where a *transferable security* or *approved money-market instrument* embedding a *derivative* is structured as an alternative to an *OTC derivative*, the requirements set out in \[\text{COLL 5.2.23 R with respect to transactions in OTC derivatives}\] will apply. This will be the case for tailor-made hybrid instruments, such as a single tranche CDO structured to meet the specific need of a *scheme*, which should be considered as embedding a *derivative*. Such a product offers an alternative to the use of an *OTC derivative*, for the same purpose of achieving a diversified exposure with a pre-set credit risk level to a portfolio of entities.

(3) The following list of *transferable securities* and *approved money-market instruments*, which is illustrative and non-exhaustive, could be assumed to embed a *derivative*:

(a) credit linked notes;

(b) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a bond index;

(c) *transferable securities* or *approved money-market instruments* whose performance is linked to the performance of a basket of shares, with or without active management;

(d) *transferable securities* or *approved money-market instruments* with a fully guaranteed nominal value whose performance is linked to the performance of a basket of shares, with or without active management;

(e) convertible bonds; and

(f) exchangeable bonds.

(4) *Schemes* cannot use *transferable securities* or *approved money-market instruments* which embed a *derivative* to circumvent the rules in this section.

(5) *Transferable securities* and *approved money-market instruments* which embed a *derivative* are subject to the rules applicable to *derivatives* as required by this section. It is the *authorised fund manager’s* responsibility to check that these requirements are complied with. The nature, frequency and scope of checks performed will depend on the characteristics of the embedded *derivatives* and on their impact on the *scheme*, taking into account its stated investment objective and risk profile.
5.2.20

Permitted transactions (derivatives and forwards)

(1) A transaction in a derivative must:
   (a) be in an approved derivative; or
   (b) be one which complies with COLL 5.2.23 R (OTC transactions in derivatives).

(2) The underlying of a transaction in a derivative must consist of any one or more of the following to which the scheme is dedicated:
   (a) transferable securities permitted under COLL 5.2.8 R (3)(a) to COLL 5.2.8 R (3)(e);
   (b) approved money-market instruments permitted under COLL 5.2.8 R (3)(a) to COLL 5.2.8 R (3)(d);
   (c) deposits permitted under COLL 5.2.26 R (Investment in deposits);
   (d) derivatives permitted under this rule;
   (e) collective investment scheme units permitted under COLL 5.2.13 R (Investment in collective investment schemes);
   (f) financial indices which satisfy the criteria set out in COLL 5.2.20A R;
   (g) interest rates;
   (h) foreign exchange rates; and
   (i) currencies.

(3) A transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.

(4) A transaction in a derivative must not cause a scheme to diverge from its investment objectives as stated in the instrument constituting the scheme and the most recently published prospectus.

(5) A transaction in a derivative must not be entered into if the intended effect is to create the potential for an uncovered sale of one or more transferable securities, approved money-market instruments, units in collective investment schemes or derivatives provided that a sale is not to be considered as uncovered if the conditions in COLL 5.2.22R (1) (Requirement to cover sales), as read in accordance with the guidance at COLL 5.2.22A G, are satisfied.
(6) Any forward transaction must be made with an eligible institution or an approved bank.

(7) A derivative includes an instrument which fulfils the following criteria:

(a) it allows the transfer of the credit risk of the underlying independently from the other risks associated with that underlying;

(b) it does not result in the delivery or the transfer of assets other than those referred to in COLL 5.2.6A R (UCITS schemes: permitted types of scheme property) including cash;

(c) in the case of an OTC derivative, it complies with the requirements in COLL 5.2.23 R (OTC transactions in derivatives);

(d) its risks are adequately captured by the risk management process of the authorised fund manager, and by its internal control mechanisms in the case of risks of asymmetry of information between the authorised fund manager and the counterparty to the derivative, resulting from potential access of the counterparty to non-public information on persons whose assets are used as the underlying by that derivative.

[Note: article 8(2) of the UCITS eligible assets Directive]

(8) A UCITS scheme may not undertake transactions in derivatives on commodities.

[Note: article 8(5) of the UCITS eligible assets Directive]

**Financial indices underlying derivatives**

(1) The financial indices referred to in COLL 5.2.20 R (2)(f) are those which satisfy the following criteria:

(a) the index is sufficiently diversified;

(b) the index represents an adequate benchmark for the market to which it refers; and

(c) the index is published in an appropriate manner.

(2) A financial index is sufficiently diversified if:

(a) it is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;

(b) where it is composed of assets in which a UCITS scheme is permitted to invest, its composition is at least diversified in...
accordance with the requirements with respect to spread and concentration set out in this section; and

(c) where it is composed of assets in which a UCITS scheme cannot invest, it is diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.

(3) A financial index represents an adequate benchmark for the market to which it refers if:

(a) it measures the performance of a representative group of underlyings in a relevant and appropriate way;

(b) it is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers, following criteria which are publicly available; and

(c) the underlyings are sufficiently liquid, allowing users to replicate it if necessary.

(4) A financial index is published in an appropriate manner if:

(a) its publication process relies on sound procedures to collect prices, and calculate and subsequently publish the index value, including pricing procedures for components where a market price is not available; and

(b) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

(5) Where the composition of underlyings of a transaction in a derivative does not satisfy the requirements for a financial index, the underlyings for that transaction shall where they satisfy the requirements with respect to other underlyings pursuant to COLL 5.2.20 R (2), be regarded as a combination of those underlyings.

[Note: article 9 of the UCITS eligible assets Directive]

Guidance on financial indices underlying derivatives

(1) An index based on derivatives on commodities or an index on property may be regarded as a financial index of the type referred to in COLL 5.2.20 R (2)(f) provided it satisfies the criteria for financial indices set out in COLL 5.2.20A R.

(2) If the composition of an index is not sufficiently diversified in order to avoid undue concentration, its underlying assets should be combined with the other assets of the UCITS scheme when assessing compliance with the requirements on cover for transactions in derivatives and forward transactions set out in COLL 5.3.3A R and spread set out in COLL 5.2.11 R.
(3) (a) In order to avoid undue concentration, where derivatives on an index composed of assets in which a UCITS scheme cannot invest are used to track or gain high exposure to the index, the index should be at least diversified in a way which is equivalent to the diversification achieved by the requirements with respect to spread and concentration set out in this section.

(b) If derivatives on that index are used for risk-diversification purposes, provided that the exposure of the UCITS scheme to that index complies with the 5%, 10% and 40% ratios required by [COLL 5.2.11 R (4) and (5), there is no need to look at the underlying components of that index to ensure that it is sufficiently diversified.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 9 of the UCITS eligible assets Directive]

(4) When assessing whether a hedge fund index satisfies the requirements for a financial index set out in this section, firms should consider The Committee of European Securities Regulators’ guidelines on the classification of hedge fund indices as financial indices (CESR/07-434). Those guidelines are available at www.fca.org.uk/your-fca.

Transactions for the purchase of property

A derivative or forward transaction which will or could lead to the delivery of property for the account of the UCITS scheme may be entered into only if:

1. that property can be held for the account of the UCITS scheme; and

2. the authorised fund manager having taken reasonable care determines that delivery of the property under the transaction will not occur or will not lead to a breach of the rules in this sourcebook.

Requirement to cover sales

1. No agreement by or on behalf of a UCITS scheme to dispose of property or rights may be made unless:

   a. the obligation to make the disposal and any other similar obligation could immediately be honoured by the UCITS scheme by delivery of property or the assignment (or, in Scotland, assignation) of rights; and

   b. the property and rights at (a) are owned by the UCITS scheme at the time of the agreement.

2. Paragraph (1) does not apply to a deposit.

3. [deleted]

4. [deleted]
5.2.22A FCA

Guidance on requirement to cover sales

(1) In the FCA’s view the requirement in COLL 5.2.22 R (1)(a) can be met where:

(a) the risks of the underlying financial instrument of a derivative can be appropriately represented by another financial instrument and the underlying financial instrument is highly liquid; or

(b) the authorised fund manager or the depositary has the right to settle the derivative in cash, and cover exists within the scheme property which falls within one of the following asset classes:

(i) cash;

(ii) liquid debt instruments (e.g. government bonds of first credit rating) with appropriate safeguards (in particular, haircuts); or

(iii) other highly liquid assets having regard to their correlation with the underlying of the financial derivative instruments, subject to appropriate safeguards (e.g. haircuts where relevant).

(2) In the asset classes referred to in (1), an asset may be considered as liquid where the instrument can be converted into cash in no more than seven business days at a price closely corresponding to the current valuation of the financial instrument on its own market.

5.2.23 FCA

OTC transactions in derivatives

A transaction in an OTC derivative under COLL 5.2.20 R (1) (b) must be:

(1) with an approved counterparty; a counterparty to a transaction in derivatives is approved only if the counterparty is:

(a) an eligible institution or an approved bank; or

(b) a person whose permission (including any requirements or limitations), as published in the Financial Services Register, or whose Home State authorisation, permits it to enter into the transaction as principal off-exchange;

(2) on approved terms; the terms of the transaction in derivatives are approved only if the authorised fund manager:

(a) carries out, at least daily, a reliable and verifiable valuation in respect of that transaction corresponding to its fair value and which does not rely only on market quotations by the counterparty; and

(b) can enter into one or more further transactions to sell, liquidate or close out that transactions at any time, at its fair value;

(3) capable of reliable valuation; a transaction in derivatives is capable of reliable valuation only if the authorised fund manager having
taken reasonable care determines that, throughout the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy:

(a) on the basis of an up-to-date market value which the authorised fund manager and the depositary have agreed is reliable; or

(b) if the value referred to in (a) is not available, on the basis of a pricing model which the authorised fund manager and the depositary have agreed uses an adequate recognised methodology; and

(4) subject to verifiable valuation; a transaction in derivatives is subject to verifiable valuation only if, throughout the life of the derivative (if the transaction is entered into) verification of the valuation is carried out by:

(a) an appropriate third party which is independent from the counterparty of the derivative, at an adequate frequency and in such a way that the authorised fund manager is able to check it; or

(b) a department within the authorised fund manager which is independent from the department in charge of managing the scheme property and which is adequately equipped for such a purpose.

[Note: articles 8(1)(b), 8(3) and 8(4) of the UCITS eligible assets Directive]

5.2.23A R For the purposes of COLL 5.2.23 R (2), "fair value" is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm’s length transaction.

5.2.23B R In respect of its obligations under COLL 6.6.4 R (1) (a), the depositary must take reasonable care to ensure that the authorised fund manager has systems and controls that are adequate to ensure compliance with COLL 5.2.23 R (1) to (4).

Valuation of OTC derivatives

5.2.23C R (1) For the purposes of COLL 5.2.23 R (2), an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:

(a) establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of the exposures of a UCITS scheme or an EEA UCITS scheme to OTC derivatives; and

(b) ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment.
(2) Where the arrangements and procedures referred to in (1) involve the performance of certain activities by third parties, the authorised fund manager or UK UCITS management company must comply with the requirements in SYSC 8.1.13 R (Additional requirements for a management company) and COLL 6.6A.4 R (5) and (6) (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes) or, where appropriate, the equivalent requirements of the UCITS Home State regulator implementing article 5(2) and article 23(4), second subparagraph, of the UCITS implementing Directive.

(3) The arrangements and procedures referred to in this rule must be:

(a) adequate and proportionate to the nature and complexity of the OTC derivative concerned; and

(b) adequately documented.

[Note: article 51(1) second paragraph of the UCITS Directive and articles 44(2) and 44(4) of the UCITS implementing Directive]

5.2.24 [deleted]

5.2.25 [deleted]

5.2.26 R

A UCITS scheme may invest in deposits only if it:

(1) is with an approved bank;

(2) is:

(a) repayable on demand; or
(b) has the right to be withdrawn; and

(3) matures in no more than 12 months.

**Significant influence for ICVCs**

(1) An ICVC must not acquire transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of that body corporate if:

(a) immediately before the acquisition, the aggregate of any such securities held by the ICVC gives the ICVC power to influence significantly the conduct of business of that body corporate; or

(b) the acquisition gives the ICVC that power.

(2) For the purpose of (1), an ICVC is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held by it, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).

**Significant influence for managers of AUTs**

(1) A manager must not acquire, or cause to be acquired for an AUT of which it is the manager, transferable securities issued by a body corporate and carrying rights to vote (whether or not on substantially all matters) at a general meeting of the body corporate if:

(a) immediately before the acquisition, the aggregate of any such securities held for that AUT, taken together with any such securities already held for other AUTs of which it is also the manager, gives the manager power significantly to influence the conduct of business of that body corporate; or

(b) the acquisition gives the manager that power.

(2) For the purpose of (1), a manager is to be taken to have power significantly to influence the conduct of business of a body corporate if it can, because of the transferable securities held for all the AUTs of which it is the manager, exercise or control the exercise of 20% or more of the voting rights in that body corporate (disregarding for this purpose any temporary suspension of voting rights in respect of the transferable securities of that body corporate).
Concentration

A UCITS scheme:

(1) must not acquire *transferable securities* (other than *debt securities*) which:
   (a) do not carry a right to vote on any matter at a general meeting of the *body corporate* that issued them; and
   (b) represent more than 10% of those *securities* issued by that *body corporate*;

(2) must not acquire more than 10% of the *debt securities* issued by any single body;

(3) must not acquire more than 25% of the *units* in a *collective investment scheme*;

(4) must not acquire more than 10% of the *approved money-market instruments* issued by any single body; and

(5) need not comply with the limits in (2), (3) and (4) if, at the time of acquisition, the net amount in issue of the relevant *investment* cannot be calculated.

UCITS schemes that are umbrellas

(1) In relation to a UCITS scheme which is an umbrella, the provisions in COLL 5.2 to COLL 5.5 apply to each *sub-fund* as they would for an *authorised fund*, except the following *rules* which apply at the level of the *umbrella* only:
   (a) COLL 5.2.27 R (Significant influence for ICVCs);
   (b) COLL 5.2.28 R (Significant influence for managers of AUTs); and
   (c) COLL 5.2.29 R (Concentration).

(2) A *sub-fund* may invest in or dispose of *units* of another *sub-fund* of the same *umbrella* (the second *sub-fund*) only if the following conditions are satisfied:
   (a) the second *sub-fund* does not hold *units* in any other *sub-fund* of the same umbrella;
   (b) the conditions in COLL 5.2.15 R (Investment in associated collective investment schemes) and COLL 5.2.16 R (Investment in other group schemes) are complied with (for the purposes of this *rule*, COLL 5.2.15 R and COLL 5.2.16 R are to be read as modified by COLL 5.2.15 R (2)); and
(c) the investing or disposing sub-fund must not be a feeder UCITS to the second sub-fund.

Schemes replicating an index

(1) Notwithstanding COLL 5.2.11 R (Spread: general), a UCITS scheme may invest up to 20% in value of the scheme property in shares and debentures which are issued by the same body where the investment policy of that scheme as stated in the most recently published prospectus is to replicate the composition of a relevant index which satisfies the criteria specified in COLL 5.2.33 R (Relevant indices).

(1A) Replication of the composition of a relevant index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments permitted for the purpose of efficient portfolio management.

[Note: article 12(1) of the UCITS eligible assets Directive]

(2) The limit in (1) can be raised for a particular UCITS scheme up to 35% in value of the scheme property, but only in respect of one body and where justified by exceptional market conditions.

Index replication

(1) Where the 20% limit (see COLL 5.2.31 R (1)) is raised (subject to the maximum of 35% permitted by COLL 5.2.31 R (2)), the authorised fund manager should provide appropriate information in the simplified prospectus, in order to explain the authorised fund manager’s assessment of why this increase is justified by exceptional market conditions.

[Note: CESR’s UCITS eligible assets guidelines with respect to Article 12(2) of the UCITS eligible assets Directive]

(2) In the case of a UCITS scheme replicating an index under COLL 5.2.31 R (Schemes replicating an index) the scheme property need not consist of the exact composition and weighting of the underlying in the relevant index in cases where the scheme’s investment objective is to achieve a result consistent with the replication of an index rather than an exact replication.

Relevant indices

(1) The indices referred to in COLL 5.2.31 R are those which satisfy the following criteria:

(a) the composition is sufficiently diversified;
(b) the index represents an adequate benchmark for the market to which it refers; and
(c) the index is published in an appropriate manner.
(2) The composition of an index is sufficiently diversified if its components adhere to the spread and concentration requirements in this section.

(3) An index represents an adequate benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

(4) An index is published in an appropriate manner if:
   
   (a) it is accessible to the public;
   
   (b) the index provider is independent from the index-replicating UCITS scheme; this does not preclude index providers and the UCITS scheme from forming part of the same group, provided that effective arrangements for the management of conflicts of interest are in place.

[Note: articles 12(2),(3) and (4) of the UCITS eligible assets Directive]

Disclosure requirements in relation to UCITS schemes or EEA UCITS schemes that employ particular investment strategies

Authorised fund managers of UCITS schemes or EEA UCITS schemes should bear in mind that where a UCITS scheme, or an EEA UCITS scheme that is a recognised scheme under section 264 of the Act, employs particular investment strategies such as investing more than 35% of its scheme property in government and public securities, or investing principally in units in collective investment schemes, deposits or derivatives, or replicating an index, COBS 4.13.2R (Marketing communications relating to UCITS schemes or EEA UCITS schemes) and COBS 4.13.3R (Marketing communications relating to a feeder UCITS) contain additional disclosure requirements in relation to marketing communications that concern those investment strategies.

Guidance on syndicated loans

(1) A syndicated loan for the purposes of this guidance means a form of loan where a group or syndicate of parties lend money to a third party and, in return, receive interest payments during the life of the debt and a return of principal either at the end of the loan period or amortised over the life of the loan. Such loans are usually arranged through agent banks which may, among other things, maintain a record of the lenders’ interest in the loan and arrange or act as a conduit for the interest payments. Whether an interest in a syndicated loan constitutes a transferable security or otherwise will depend on the terms of the relevant instrument. Where an authorised fund manager plans to invest scheme property in interests in such syndicated loans, it may wish to consider seeking professional advice as to their eligibility.

(2) To determine whether an interest in a syndicated loan would be an eligible investment for a UCITS scheme in accordance with COLL 5.2, an authorised fund manager should first consider whether it constitutes a transferable security within the meaning of COLL 5.2.7 R (Transferable securities) and then consider the additional eligibility criteria arising out of the UCITS eligible assets Directive that relate to liquidity, valuations and negotiability (see COLL 5.2.7A R (Investment in transferable securities)).
(3) A UCITS scheme cannot lend money from its scheme property. Accordingly, it is unable to partake in the initial funding of a syndicated loan either as an original lender or as a person who becomes a lender as part of the primary syndication of the loan. However, we recognise that a UCITS scheme may be acknowledged as the lender of record as a consequence of the legal form of transfer used to purchase a loan in the secondary market, such as novation.

(4) An instrument will not be a transferable security if it falls within one or more of the exclusions set out in article 77(2) of the Regulated Activities Order. An instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services would be an example of an exclusion.

(5) In the FCA’s opinion, for an instrument to be classed as a debenture for the purposes of constituting a transferable security (see COLL 5.2.7 R (1)(b)), there must be an instrument creating or evidencing indebtedness. A facilities agreement and a drawdown request which does not create or evidence indebtedness will not be a debenture for these purposes.

(6) In the FCA’s view, the simple fact that a debt obligation is legally transferable (whether by way of creation, assignment or otherwise) does not necessarily make it negotiable for the purposes of COLL 5.2.7AR (1)(e) (Investment in transferable securities), so as to make it a permissible investment for a UCITS scheme. When securities are capable of being traded on a capital market, whether on-exchange or off-exchange, as a class and are fungible within their class, this would tend to indicate (unless the AFM was aware of specific evidence to the contrary) that they are negotiable.

(7) The FCA’s understanding is that leveraged loans are a non-investment grade sub-set of syndicated loans and, where this is the case, AFMs should use similar analysis to determine whether or not interests in such loans are eligible investments for UCITS schemes.

(8) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a UCITS scheme is subject to the spread requirements in COLL 5.2.11 R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of COLL 5.2.8 R (3) (Transferable securities and money-market instruments generally to be admitted to or dealt in on an eligible market), the scheme’s overall exposure to such loans will count towards the limit in COLL 5.2.8 R (4).
5.3 Derivative exposure

Application

This section applies to an authorised fund manager of a UCITS scheme and to an ICVC which is a UCITS scheme.

Introduction

(1) A scheme may invest in derivatives and forward transactions as long as the exposure to which the scheme is committed by that transaction itself is suitably covered from within its scheme property. Exposure will include any initial outlay in respect of that transaction.

(2) Cover ensures that a scheme is not exposed to the risk of loss of property, including money, to an extent greater than the net value of the scheme property. Therefore, a scheme is required to hold scheme property sufficient in value or amount to match the exposure arising from a derivative obligation to which the scheme is committed. This section sets out detailed requirements for cover of a scheme.

(3) In accordance with COLL 5.1.3 R (2)(b) (Treatment of obligations), cover used in respect of one transaction in derivatives or forward transaction should not be used for cover in respect of another transaction in derivatives or a forward transaction.

(1) [deleted]

(2) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted]

Cover for investment in derivatives and forward transactions

The authorised fund manager of a UCITS scheme must ensure that its global exposure relating to derivatives and forward transactions held in the UCITS scheme does not exceed the net value of the scheme property.

[Note: article 51(3) first paragraph of the UCITS Directive]
Daily calculation of global exposure

An authorised fund manager of a UCITS scheme must calculate its global exposure on at least a daily basis.

[Note: article 41(2) of the UCITS implementing Directive]

For the purposes of this section, exposure must be calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.

[Note: article 51(3) second paragraph of the UCITS Directive]

Guidance on cover

(1) An authorised fund manager should note that the scope of COLL 5.3.3C R is extended in relation to underwriting commitments by COLL 5.5.8 R (4) (General power to accept or underwrite placings).

(2) Property the subject of a transaction under COLL 5.4 (Stock lending) should not be considered as available for cover unless the authorised fund manager has taken reasonable care to determine that it is obtainable (by return or re-acquisition) in time to meet the obligation for which cover is required.

Borrowing

(1) Cash obtained from borrowing, and borrowing which the authorised fund manager reasonably regards an eligible institution or an approved bank to be committed to provide, is not available for cover under COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), except if (2) applies.

(2) Where, for the purposes of this section, the ICVC or the trustee for the account of the AUT on the instructions of the manager:

(a) borrows an amount of currency from an eligible institution or an approved bank; and

(b) keeps an amount in another currency, at least equal to the borrowing for the time being in (a), on deposit with the lender (or his agent or nominee);

then this section applies as if the borrowed currency, and not the deposited currency, were part of the scheme property.

(1) [deleted]

(2) [deleted]
Calculation of global exposure

An authorised fund manager must calculate the global exposure of any UCITS scheme it manages either as:

(1) the incremental exposure and leverage generated through the use of derivatives and forward transactions (including embedded derivatives as referred to in COLL 5.2.19 R (3A) (Derivatives: general)), which may not exceed 100% of the net value of the scheme property; or

(2) the market risk of the scheme property.

[Note: article 41(1) of the UCITS implementing Directive]

(1) An authorised fund manager must calculate the global exposure of a UCITS scheme by using:

(a) the commitment approach; or

(b) the value at risk approach.

(2) An authorised fund manager must ensure that the method selected in (1) is appropriate, taking into account:

(a) the investment strategy pursued by the UCITS scheme;

(b) the types and complexities of the derivatives and forward transactions used; and

(c) the proportion of the scheme property comprising derivatives and forward transactions.

(3) Where a UCITS scheme employs techniques and instruments including repo contracts or stock lending transactions in accordance with COLL 5.4 (Stock lending) in order to generate additional leverage or exposure to market risk, the authorised fund manager must take those transactions into consideration when calculating global exposure.

(4) For the purposes of (1), value at risk means a measure of the maximum expected loss at a given confidence level over the specific time period.

[Note: articles 41(3) and 41(4) of the UCITS implementing Directive]

Commitment approach

Where an authorised fund manager of a UCITS scheme uses the commitment approach for the calculation of global exposure, it must:

(1) ensure that it applies this approach to all derivative and forward transactions (including embedded derivatives as referred to in
(1) An authorised fund manager of a UCITS scheme may apply other calculation methods which are equivalent to the standard commitment approach.

(2) An authorised fund manager may take account of netting and hedging arrangements when calculating global exposure of a UCITS scheme, where those arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.

(3) Where the use of derivatives or forward transactions does not generate incremental exposure for the UCITS scheme, the underlying exposure need not be included in the commitment calculation.

(4) Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS scheme in accordance with COLL 5.5.4 R (General power to borrow) need not form part of the global exposure calculation.

[Note: articles 42(1) and 42(2) first paragraph of the UCITS implementing Directive]

CESR guidelines

Authorised fund managers are advised that both CESR and its successor body, the European Securities and Markets Authority (ESMA) have issued guidelines which, in accordance with the UCITS implementing Directive, authorised fund managers should comply with in applying the rules in this section:

Guidelines: Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (CESR/10-788)


Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS (ESMA/2011/112)

5.4 Stock lending

Application

This section applies to an ICVC, the depositary of an authorised fund and an authorised fund manager in any case where the authorised fund is a UCITS scheme or a non-UCITS retail scheme.

Permitted stock lending

(1) This section covers techniques relating to transferable securities and approved money-market instruments which are used for the purpose of efficient portfolio management. It permits the generation of additional income for the benefit of the authorised fund, and hence for its investors, by entry into stock lending transactions for the account of the authorised fund.

(2) The specific method of stock lending permitted in this section is in fact not a transaction which is a loan in the normal sense. Rather it is an arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992, under which the lender transfers securities to the borrower otherwise than by way of sale and the borrower is to transfer those securities, or securities of the same type and amount, back to the lender at a later date. In accordance with good market practice, a separate transaction by way of transfer of assets is also involved for the purpose of providing collateral to the "lender" to cover him against the risk that the future transfer back of the securities may not be satisfactorily completed.

Stock lending: general

An authorised fund may only enter into a stock lending arrangement or repo contract in accordance with the rules in this section if it reasonably appears to the ICVC or manager to be appropriate to do so with a view to generating additional income for the authorised fund with an acceptable degree of risk.

Stock lending: requirements

(1) An ICVC, or the depositary at the request of the ICVC, or the trustee at the request of the manager, may enter into a repo contract, or a stock lending arrangement of the kind described in section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C), but only if:
(a) all the terms of the agreement under which securities are to be reacquired by the depositary for the account of the ICVC or by the trustee, are in a form which is acceptable to the depositary or to the trustee and are in accordance with good market practice;

(b) the counterparty is:
   (i) an authorised person; or
   (ii) a person authorised by a Home State regulator; or
   (iii) a person registered as a broker-dealer with the Securities and Exchange Commission of the United States of America; or
   (iv) a bank, or a branch of a bank, supervised and authorised to deal in investments as principal, with respect to OTC derivatives by at least one of the following federal banking supervisory authorities of the United States of America:
      (A) the Office of the Comptroller of the Currency;
      (B) the Federal Deposit Insurance Corporation;
      (C) the Board of Governors of the Federal Reserve System; and
      (D) the Office of Thrift Supervision; and

(c) collateral is obtained to secure the obligation of the counterparty under the terms referred to in (a) and the collateral is:
   (i) acceptable to the depositary;
   (ii) adequate; and
   (iii) sufficiently immediate.

(2) The counterparty for the purpose of (1) is the person who is obliged under the agreement referred to in (1)(a) to transfer to the depositary the securities transferred by the depositary under the stock lending arrangement or securities of the same kind.

(3) (1)(c) does not apply to a stock lending transaction made through Euroclear Bank SA/NV’s Securities Lending and Borrowing Programme.

Stock lending: treatment of collateral

Where a stock lending arrangement is entered into, the scheme property remains unchanged in terms of value. The securities transferred cease to be part of the scheme property, but there is obtained in return an obligation on the part of the counterparty.
to transfer back equivalent securities. The depositary will also receive collateral to set against the risk of default in transfer, and that collateral is equally irrelevant to the valuation of the scheme property (because it is transferred against an obligation of equivalent value by way of re-transfer). COLL 5.4.6 R accordingly makes provision for the treatment of the collateral in that context.

5.4.6 FCA

(1) Collateral is adequate for the purposes of this section only if it is:

(a) transferred to the depositary or its agent;

(b) at least equal in value, at the time of the transfer to the depositary, to the value of the securities transferred by the depositary; and

(c) in the form of one or more of:

(i) cash; or

(ii) [deleted]

(iii) a certificate of deposit; or

(iv) a letter of credit; or

(v) a readily realisable security; or

(vi) commercial paper with no embedded derivative content; or

(vii) a qualifying money market fund.

(1A) Where the collateral is invested in units in a qualifying money market fund managed or operated by (or, for an ICVC, whose ACD is) the authorised fund manager of the investing scheme or an associate of that authorised fund manager, the conditions in COLL 5.2.16 R (Investment in other group schemes) must be complied with whether or not the investing scheme is a UCITS scheme or a non-UCITS retail scheme.

(2) Collateral is sufficiently immediate for the purposes of this section if:

(a) it is transferred before or at the time of the transfer of the securities by the depositary; or

(b) the depositary takes reasonable care to determine at the time referred to in (a) that it will be transferred at the latest by the close of business on the day of the transfer.

(3) The depositary must ensure that the value of the collateral at all times is at least equal to the value of the securities transferred by the depositary.
(4) The duty in (3) may be regarded as satisfied in respect of collateral the validity of which is about to expire or has expired where the depositary takes reasonable care to determine that sufficient collateral will again be transferred at the latest by the close of business on the day of expiry.

(5) Any agreement for transfer at a future date of securities or of collateral (or of the equivalent of either) under this section may be regarded, for the purposes of valuation under COLL 6.3 (Valuation and pricing) or this chapter, as an unconditional agreement for the sale or transfer of property, whether or not the property is part of the property of the authorised fund.

(6) Collateral transferred to the depositary is part of the scheme property for the purposes of the rules in this sourcebook, except in the following respects:

(a) it does not fall to be included in any valuation for the purposes of COLL 6.3 or this chapter, because it is offset under (5) by an obligation to transfer; and

(b) it does not count as scheme property for any purpose of this chapter other than this section.

(7) Paragraph (5) and (6)(a) do not apply to any valuation of collateral itself for the purposes of this section.

Limitation by value

There is no limit on the value of the scheme property which may be the subject of repo contracts or stock lending transactions within this section.

Guidance relating to the use of cash collateral

(1) The use of stock lending or the reinvestment of cash collateral should not result in a change of the scheme’s declared investment objectives or add substantial supplementary risks to the scheme’s risk profile.

(2) Collateral taking the form of cash may only be invested in:

(a) one of the investments coming within COLL 5.4.6 R (1) (c) to (vii) (Treatment of collateral); or

(b) deposits, provided they:

(i) are capable of being withdrawn within five business days, or such shorter time as may be dictated by the stock lending agreement; and

(ii) satisfy the requirements of COLL 5.2.26 R (1) (Investment in deposits).
Where a scheme generates leverage through the reinvestment of collateral, this should be taken into account in the calculation of the scheme's global exposure.

[Note: CESR's UCITS eligible assets guidelines with respect to article 11 of the UCITS eligible assets Directive (part)]
5.5 Cash, borrowing, lending and other provisions

Application

This section applies to an ICVC, an ACD, a manager of an AUT, a depositary of an ICVC and a trustee of an AUT, where such ICVC or AUT is a UCITS scheme as set out in COLL 5.5.2 R (Table of application).

Table of application

This table belongs to COLL 5.5.1 R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
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Note: x means "applies"
Cash and near cash

(1) Cash and near cash must not be retained in the scheme property except to the extent that this may reasonably be regarded as necessary in order to enable:

(a) the pursuit of the scheme's investment objectives; or

(b) redemption of units; or

(c) efficient management of the authorised fund in accordance with its investment objectives; or

(d) other purposes which may reasonably be regarded as ancillary to the investment objectives of the authorised fund.

(2) During the period of the initial offer the scheme property may consist of cash and near cash without limitation.

General power to borrow

(1) The ICVC or trustee (on the instructions of the manager) may, in accordance with this rule and COLL 5.5.5 R (Borrowing limits), borrow money for the use of the authorised fund on terms that the borrowing is to be repayable out of the scheme property.

(2) Paragraph (1) is subject to the obligation of the authorised fund to comply with any restriction in the instrument constituting the scheme.

(3) The ICVC or trustee may borrow under (1) only from an eligible institution or an approved bank.

(4) The authorised fund manager must ensure that any borrowing is on a temporary basis and that borrowings are not persistent, and for this purpose the authorised fund manager must have regard in particular to:

(a) the duration of any period of borrowing; and

(b) the number of occasions on which resort is had to borrowing in any period.

(5) In addition to complying with (4), the authorised fund manager must ensure that no period of borrowing exceeds three months, whether in respect of any specific sum or at all, without the prior consent of the depositary.

(6) The depositary may only give its consent as required under (5) on such conditions as appear to the depositary appropriate to ensure that the borrowing does not cease to be on a temporary basis only.
(7) This *rule* does not apply to "back to back" borrowing under COLL 5.3.5 R (2) (Borrowing).

(8) An ICVC must not issue any *debenture* unless it acknowledges or creates a borrowing that complies with (1) to (6).

### Borrowing limits

(1) The *authorised fund manager* must ensure that the *authorised fund’s* borrowing does not, on any day, exceed 10% of the value of the *scheme property*.

(2) This *rule* does not apply to "back to back" borrowing under COLL 5.3.5 R (2) (Borrowing).

(3) In this *rule*, borrowing includes, as well as borrowing in a conventional manner, any other arrangement (including a combination of derivatives) designed to achieve a temporary injection of *money* into the *scheme property* in the expectation that the sum will be repaid.

(4) [deleted]

### Restrictions on lending of money

(1) None of the *money* in the *scheme property* of an *authorised fund* may be lent and, for the purposes of this prohibition, *money* is lent by an *authorised fund* if it is paid to a *person* ("the payee") on the basis that it should be repaid, whether or not by the payee.

(2) Acquiring a *debenture* is not lending for the purposes of (1); nor is the placing of *money* on deposit or in a current account.

(3) Paragraph (1) does not prevent an ICVC from providing an *officer* of the ICVC with funds to meet expenditure to be incurred by him for the purposes of the ICVC (or for the purposes of enabling him properly to perform his duties as an *officer* of the ICVC) or from doing anything to enable an *officer* to avoid incurring such expenditure.

### Restrictions on lending of property other than money

(1) The *scheme property* of an *authorised fund* other than *money* must not be lent by way of deposit or otherwise.

(2) Transactions permitted by COLL 5.4 (Stock lending) are not to be regarded as lending for the purposes of (1).

(3) The *scheme property* must not be mortgaged.
(4) Where transactions in derivatives or forward transactions are used for the account of the authorised fund in accordance with any of the rules in this chapter, nothing in this rule prevents the ICVC or the depositary at the request of the ICVC, or the trustee at the request of the manager, from:

(a) lending, depositing, pledging or charging scheme property for margin requirements; or

(b) transferring scheme property under the terms of an agreement in relation to margin requirements, provided that the authorised fund manager reasonably considers that both the agreement and the margin arrangements made under it (including in relation to the level of margin) provide appropriate protection to unitholders.

An agreement providing appropriate protection to unitholders for the purposes of COLL 5.5.7 R (4)(b) includes one made in accordance with the 1995 International Swaps and Derivatives Association Credit Support Annex (English Law) to the International Swaps and Derivatives Association Master Agreement.

5.5.8 General power to accept or underwrite placings

(1) Any power in this chapter to invest in transferable securities may be used for the purpose of entering into transactions to which this rule applies, subject to compliance with any restriction in the instrument constituting the scheme.

(2) This rule applies to any agreement or understanding which:

(a) is an underwriting or sub-underwriting agreement; or

(b) contemplates that securities will or may be issued or subscribed for or acquired for the account of the authorised fund.

(3) Paragraph (2) does not apply to:

(a) an option; or

(b) a purchase of a transferable security which confers a right to:

(i) subscribe for or acquire a transferable security; or

(ii) convert one transferable security into another.

(4) The exposure of an authorised fund to agreements and understandings within (2) must, on any day, be:

(a) covered under COLL 5.3.3A R (Cover for investment in derivatives and forward transactions); and
such that, if all possible obligations arising under them had immediately to be met in full, there would be no breach of any limit in this chapter.

Guarantees and indemnities

(1) An ICVC or a depositary for the account of an authorised fund must not provide any guarantee or indemnity in respect of the obligation of any person.

(2) None of the scheme property of an authorised fund may be used to discharge any obligation arising under a guarantee or indemnity with respect to the obligation of any person.

(3) Paragraphs (1) and (2) do not apply to:

(a) any indemnity or guarantee given for margin requirements where the derivatives or forward transactions are being used in accordance with the rules in this chapter; and

(b) for an ICVC:

(i) an indemnity falling within the provisions of regulation 62(3) of the OEIC Regulations (Exemptions from liability to be void);

(ii) an indemnity (other than any provision in it which is void under regulation 62 of the OEIC Regulations) given to the depositary against any liability incurred by it as a consequence of the safekeeping of any of the scheme property by it or by anyone retained by it to assist it to perform its function of the safekeeping of the scheme property; and

(iii) an indemnity given to a person winding up a scheme if the indemnity is given for the purposes of arrangements by which the whole or part of the property of that scheme becomes the first property of the ICVC and the holders of units in that scheme become the first unitholders in the ICVC; and

(c) for an AUT, an indemnity given to a person winding up a body corporate or other scheme in circumstances where those assets are becoming part of the scheme property by way of a unitisation.

Guidance on restricting payments

COLL 6.15 R (Payment of liabilities on transfer of assets) and COLL 6.4.7 R (Payments out of scheme property) contain provisions restricting payments out of scheme property.
5.6 Investment powers and borrowing limits for non-UCITS retail schemes

Application

5.6.1 FCA

(1) This section applies to the authorised fund manager and the depositary of a non-UCITS retail scheme and to an ICVC which is a non-UCITS retail scheme.

(2) Where this section contains a reference to a rule in any of ■ COLL 5.1 to ■ COLL 5.5, these rules and any rules to which they refer or any relevant guidance should be read as if any reference to a UCITS scheme is to a non-UCITS retail scheme.

Explanation of ■ COLL 5.6

5.6.2 FCA

(1) This section contains rules on the types of permitted investments and any relevant limits with which non-UCITS retail schemes must comply. These rules allow for the relaxation of certain investment and borrowing powers from the requirements of the UCITS Directive. Consequently, a scheme authorised as a non-UCITS retail scheme will not qualify for the cross border passporting rights conferred by the UCITS Directive on a UCITS scheme.

(2) Some examples of the different investment and borrowing powers under the rules in this section for non-UCITS retail schemes are the power to:

(a) invest not more than 10% of the value of scheme property in transferable securities or money-market instruments issued by any single body;

(b) invest in up to 20% in aggregate of the value of the scheme property in transferable securities which are not approved securities and unregulated schemes;

(c) invest in a wider range of schemes which do not comply with the requirements of the UCITS Directive;

(d) include gold in the scheme property (up to a limit of 10% of the value of the scheme property);

(e) include immovables in the scheme property; and

(f) borrow on a non-temporary basis without any specific time limit as to repayment of the borrowing.
5.6.3 FCA

**Prudent spread of risk**

1. An *authorised fund manager* must ensure that, taking account of the investment objectives and policy of the *non-UCITS retail scheme* as stated in its most recently published *prospectus*, the *scheme property* of the *non-UCITS retail scheme* aims to provide a prudent spread of risk.

1A. For a *feeder NURS*, (1) applies only to the extent that the *feeder NURS* invests in assets other than *units* of its *qualifying master scheme*.

2. Subject to (3) and (4), the *rules* in this section relating to spread of investments, including immovables, do not apply until 12 *months* after the later of:

   a. the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
   
   b. the date the *initial offer* commenced;

provided that (1) is complied with during such period.

3. Subject to (4), the limits in ■ COLL 5.6.19 R do not apply until 24 *months* after the later of:

   a. the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect; and
   
   b. the date the *initial offer* commenced;

provided that (1) is complied with during such period.

4. The limit in ■ COLL 5.6.19 R (7) relating to immovables which are unoccupied and non-income producing or are in the course of substantial development, redevelopment or refurbishment applies from the later of the date when the *authorisation order* in respect of the *non-UCITS retail scheme* takes effect and the date the *initial offer* period commenced.

5.6.4 FCA

**Investment powers: general**

1. The *scheme property* of a *non-UCITS retail scheme* may, subject to the *rules* in this section, comprise any assets or *investments* to which it is *dedicated*.

2. For an *ICVC*, the *scheme property* may also include movable or immovable property that is necessary for the direct pursuit of the *ICVC’s* business of investing in those assets or investments.

3. The *scheme property* must be invested only in accordance with the relevant provisions in this section that are applicable to that
non-UCITS retail scheme and within any upper limit specified in this section.

(4) The instrument constituting the scheme may restrict the investment powers of a scheme further than the relevant restrictions in this section.

(5) The scheme property may only, except where otherwise provided in the rules in this section, consist of any one or more of:

(a) transferable securities;
(b) money-market instruments;
(c) units in collective investment schemes permitted under ■ COLL 5.6.10 R (Investment in collective investment schemes);
(d) derivatives and forward transactions permitted under ■ COLL 5.6.13 R (Permitted transactions (derivatives and forwards));
(e) deposits permitted under ■ COLL 5.2.26 R (Investment in deposits);
(f) immovable permitted under ■ COLL 5.6.18 R (Investment in property) to ■ COLL 5.6.19 R (Investment limits for immovables); and
(g) gold up to a limit of 10% in value of the scheme property.

Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme

Transferable securities and money-market instruments held within a non-UCITS retail scheme must:

(1) (a) be admitted to or dealt in on an eligible market within ■ COLL 5.2.10 R (Eligible markets: requirements); or
(b) be recently issued transferable securities which satisfy the requirements for investment by a UCITS scheme set out in ■ COLL 5.2.8 R (3)(e); or
(c) be approved money-market instruments not admitted to or dealt in on an eligible market which satisfy the requirements for investment by a UCITS scheme set out in ■ COLL 5.2.10A R to ■ COLL 5.2.10C R ; or

(2) subject to a limit of 20% in value of the scheme property be:

(a) transferable securities which are not within (1) ; or
(b) money-market instruments which are liquid and have a value which can be determined accurately at any time.
Transferable securities held within a non-UCITS retail scheme must also satisfy the criteria in ■ COLL 5.2.7A R, ■ COLL 5.2.7C R and ■ COLL 5.2.7E R for the purposes of investment by a UCITS scheme.

COLL 5.5A  FCA

COLL 5.2.7A R to ■ COLL 5.2.7E R contain rules and guidance relating to the criteria that need to be satisfied for the purposes of investment in transferable securities.

COLL 5.5B  FCA

Where a scheme is a short-term money market fund or a money market fund, the ability to hold up to 20% of scheme property in ineligible assets under ■ COLL 5.6.5 R (2) is limited to high quality approved money-market instruments as determined under ■ COLL 5.9.6 R (High quality money market instruments).

Money Market funds

COLL 5.5C  FCA

Approved money-market instruments held within a non-UCITS retail scheme which is a short-term money market fund or money market fund must also satisfy the criteria in ■ COLL 5.2.7F R to ■ COLL 5.2.7H R (Approved money-market instruments).

Valuation

COLL 5.5D  FCA

In this section the value of the scheme property means the value of the scheme property determined in accordance with ■ COLL 5.2.5 R (Valuation).

Spread: general

COLL 5.5E  FCA

(1) This rule does not apply in respect of government and public securities.

(2) Not more than 20% in value of the scheme property is to consist of deposits with a single body.

(3) Not more than 10% in value of the scheme property is to consist of transferable securities or money-market instruments issued by any single body subject to ■ COLL 5.6.23 R (Schemes replicating an index).

(3A) The limit of 10% in (3) is raised to 25% in value of the scheme property in respect of covered bonds.

(4) In applying (3) certificates representing certain securities are to be treated as equivalent to the underlying security.

(5) The exposure to any one counterparty in an OTC derivative transaction must not exceed 10% in value of the scheme.

(6) Except for a feeder fund, a feeder NURS or a scheme dedicated to units in a single property authorised investment fund, not
more than 35% in value of the scheme is to consist of the units of any one scheme.

6A) Schemes which (in respect of investment in units in collective investment schemes) are dedicated to units in a single property authorised investment fund or qualifying master scheme must, in addition to the investment in the property authorised investment fund or qualifying master scheme, only hold cash or near cash to maintain sufficient liquidity to enable the scheme to meet its commitments, such as redemptions. Schemes may also use techniques and instruments for the purpose of efficient portfolio management, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

7) For the purpose of calculating the limit in (5), the exposure in respect of an OTC derivative may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (8).

8) The conditions referred to in (7) are that the collateral:
   (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;
   (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
   (c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and
   (d) can be fully enforced by the non-UCITS retail scheme at any time.

9) For the purpose of calculating the limit in (5), OTC derivative positions with the same counterparty may be netted provided that the netting procedures:
   (a) comply with the conditions set out in Part 7 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the Banking Consolidation Directive; and
   (b) are based on legally binding agreements.

10) In applying this rule, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the clearing house meets each of the following conditions:
   (a) it is backed by an appropriate performance guarantee; and
(b) it is characterised by a daily mark-to-market valuation of the derivative positions and an at least daily margining.

(11) For the purposes of this rule a single body is:

(a) in relation to transferable securities and money market instruments, the person by whom they are issued; and

(b) in relation to deposits, the person with whom they are placed.

Guidance on spread: general

(1) COLL 5.6.7 R (7) to (10) replicate the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities, so as to enable non-UCITS retail schemes to benefit from the same flexibility.

(2) The attention of authorised fund managers is specifically drawn to condition (d) in COLL 5.6.7 R (8) under which the collateral has to be legally enforceable at any time. It is the FCA’s view that it is advisable for an authorised fund manager to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. The depositary will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under COLL 6.6.4 R (General duties of the depositary).

(3) In applying the spread limit of 20% in value of scheme property which may consist of deposits with a single body, all uninvested cash comprising capital property that the depositary holds should be included in calculating the total sum of the deposits held by it on behalf of the scheme.

Spread: government and public securities

(1) This rule applies in respect of government and public securities.

(2) The requirements in COLL 5.2.12 R (Spread: government and public securities) apply to investment in government and public securities by a non-UCITS retail scheme, except for COLL 5.2.12 R (4) which will apply to such a scheme only to the extent that it concerns the most recently published prospectus of the scheme.

Investment in nil and partly paid securities

A non-UCITS retail scheme must not invest in nil and partly paid securities unless the investment complies with the conditions in COLL 5.2.17 R (Investment in nil and partly paid securities).
5.6.10 FCA

**Investment in collective investment schemes**

A non-UCITS retail scheme, except for a feeder NURS (which must instead comply with COLL 5.6.26 R), must not invest in units in a collective investment scheme (second scheme) unless the second scheme meets each of the requirements at (1) to (5):

1. the second scheme:
   (a) satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive; or
   (b) is a non-UCITS retail scheme; or
   (c) is a recognised scheme; or
   (d) is constituted outside the United Kingdom and the investment and borrowing powers of which are the same or more restrictive than those of a non-UCITS retail scheme; or
   (e) is a scheme not falling within (a) to (d) and in respect of which no more than 20% in value of the scheme property (including any transferable securities which are not approved securities) is invested;

2. the second scheme operates on the principle of the prudent spread of risk;

3. the second scheme is prohibited from having more than 15% in value of the property of that scheme consisting of units in collective investment schemes;

4. the participants in the second scheme must be entitled to have their units redeemed in accordance with the scheme at a price:
   (a) related to the net value of the property to which the units relate; and
   (b) determined in accordance with the scheme;

5. where the second scheme is an umbrella, the provisions in (2) to (4) and COLL 5.6.7 R (Spread: general) apply to each sub-fund as if it were a separate scheme.

**Investment in associated collective investment schemes**

5.6.11 FCA

(1) Units in a scheme do not fall within COLL 5.6.10 R if that scheme is managed or operated by (or, if it is an ICVC, has as its ACD) the authorised fund manager of the investing non-UCITS retail scheme or by an associate of that authorised fund manager, unless:
   (a) the prospectus of the investing authorised fund clearly states that the property of that investing fund may include such units; and
(b) the conditions in COLL 5.2.16 R (Investment in other group schemes) are complied with.

(2) Where a sub-fund of a non-UCITS retail scheme which is an umbrella invests in or disposes of units in another sub-fund of the same umbrella (the second sub-fund), the requirement in:

(a) COLL 5.6.11 R (1)(a) is modified as follows - the prospectus of the umbrella must clearly state that the scheme property attributable to the investing or disposing sub-fund may include units in another sub-fund of the same umbrella; and

(b) COLL 5.6.11 R (1)(b) is modified as follows - COLL 5.2.16 R (Investment in other group schemes) must be complied with, modified such that references to the "UCITS scheme" are taken to be references to the investing or disposing sub-fund and references to the "second scheme" are taken to be references to the second sub-fund.

Derivatives: general

(1) A transaction in derivatives or a forward transaction must not be effected for a non-UCITS retail scheme unless the transaction is:

(a) of a kind specified in COLL 5.6.13 R (Permitted transactions (derivatives and forwards)); and

(b) covered, as required by COLL 5.3.3A R (Cover for investment in derivatives and forward transactions).

(2) Where a scheme invests in derivatives, the exposure to the underlying assets must not exceed the limits in COLL 5.6.7 R (Spread: general) and COLL 5.6.8 R (Spread: government and public securities) except as provided in (4).

(3) Where a transferable security or money-market instrument embeds a derivative, this must be taken into account for the purposes of calculating any limit in this section.

(4) Where a scheme invests in an index-based derivative, provided the relevant index falls within COLL 5.6.23 R (Schemes replicating an index) the underlying constituents of the index do not have to be taken into account for the purposes of COLL 5.6.7 R and COLL 5.6.8 R.

(5) The relaxation in (4) is subject to the authorised fund manager taking account of COLL 5.6.3 R (Prudent spread of risk).
Permitted transactions (derivatives and forwards)

1. A transaction in a derivative must be within COLL 5.2.20 R (1) (Permitted transactions (derivatives and forwards)) and:
   a. the underlying must be within COLL 5.6.4 R (5) (Investment powers: general) or COLL 5.2.20 R (2)(f) to (i); and
   b. the exposure to the underlying must not exceed the limits in COLL 5.6.7 R (Spread: general), COLL 5.6.8 R (Spread: government and public securities) and COLL 5.6.5 R (2).

2. A transaction in an approved derivative must be effected on or under the rules of an eligible derivatives market.

3. A transaction in a derivative must not cause a scheme to diverge from its investment objectives as stated in the instrument constituting the scheme and the most recently published prospectus.

4. A transaction in a derivative must not be effected if the intended effect is to create the potential for an uncovered sale of:
   a. transferable securities;
   b. money-market instruments;
   c. units in collective investment schemes; or
   d. derivatives.

5. Any forward transaction must be made with an eligible institution or an approved bank.

6. The authorised fund manager must ensure compliance with COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), COLL 5.3.3B R and COLL 5.3.3C R (Daily calculation of global exposure).

Transactions for the purchase or disposal of property

The requirements of COLL 5.2.21 R (Transactions for the purchase of property) and COLL 5.2.22 R (Requirement to cover sales) apply to non-UCITS retail schemes in the same manner as to UCITS schemes.

OTC transactions in derivatives

Any transaction in an OTC derivative under COLL 5.6.13 R (Permitted transactions (derivatives and forwards)) must comply with the requirements of COLL 5.2.23 R (OTC transactions in derivatives).

Risk management

An authorised fund manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk associated
with a non-UCITS retail scheme’s positions and their contribution to the overall risk profile of the scheme.

### Risk management process

1. The risk management process should take account of the investment objectives and policy of the non-UCITS retail scheme as stated in its most recent prospectus.

2. The depositary should take reasonable care to review the appropriateness of the risk management process in line with its duties under COLL 6.6.4 R (General duties of the depositary) and COLL 6.6.14 R (Duties of the depositary and authorised fund manager: investment and borrowing powers), as appropriate.

3. An authorised fund manager is expected to demonstrate more sophistication in its risk management process for a non-UCITS retail scheme with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.

4. An authorised fund manager should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 4.1 (General requirements).

5. The risk management process should enable the analysis required by COLL 5.6.16 R (Risk management) to be undertaken at least daily or at each valuation point whichever is the more frequent.

### Investment in property

1. Any investment in land or a building held within the scheme property of a non-UCITS retail scheme must be an immovable within (2) to (5).

2. An immovable must:
   a. be situated in a country or territory identified in the prospectus for the purpose of this rule; and
   b. if situated in:
      i. England and Wales or Northern Ireland, be a freehold or leasehold interest; or
      ii. Scotland, be any interest or estate in or over land or heritable right including a long lease; or
   c. if not situated in the jurisdictions referred to in (b)(i) or (ii), be equivalent to any of the interests in (b)(i) or (ii) or, if no such equivalent interest is available in the jurisdiction, be an interest that grants beneficial ownership of the immovable to the scheme and provides as good a title as any of the interests in (b)(i) or (ii).
(3) The authorised fund manager must have taken reasonable care to
determine that the title to the immovable is a good marketable
title.

(4) The manager or the ICVC must:
(a) have received a report from an appropriate valuer which:
   (i) contains a valuation of the immovable (with and without
   any relevant subsisting mortgage); and
   (ii) states that in the appropriate valuer’s opinion the
   immovable would, if acquired by the scheme, be capable
   of being disposed of reasonably quickly at that valuation;
   or

(b) have received a report from an appropriate valuer as required
   by (4)(a)(i) and stating that:
   (i) the immovable is adjacent to or in the vicinity of another
   immovable included in the scheme property or is another
   legal interest as defined in (2)(b) or (c) in an immovable
   which is already included in the scheme property; and
   (ii) in the opinion of the appropriate valuer, the total value of
   both immovables would at least equal the sum of the price
   payable for the immovable and the existing value of the
   other immovable.

(5) An immovable must:
(a) be bought or be agreed by enforceable contract to be bought
   within six months after receipt of the report of the appropriate
   valuer under (4);

(b) not be bought, if it is apparent to the authorised fund manager
   that the report in (a) could no longer reasonably be relied upon;
   and

(c) not be bought at more than 105% of the valuation for the
   relevant immovable in the report in (4).

(6) Any furniture, fittings or other contents of any building may be
regarded as part of the relevant immovable.

(7) An appropriate valuer must be a person who:
(a) has knowledge of and experience in the valuation of
immovables of the relevant kind in the relevant area;

(b) is qualified to be a standing independent valuer of a
non-UCITS retail scheme or is considered by the scheme's
standing independent valuer to hold an equivalent qualification;

(c) is independent of the ICVC, the depositary and each of the directors of the ICVC or of the manager and trustee of the AUT; and

(d) has not engaged himself or any of his associates in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

Investment in overseas property through an intermediate holding vehicle

(1) An overseas immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an overseas immovable shall be treated for the purposes of this chapter as if it were a direct investment in that immovable.

(2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.

(1) The authorised fund manager may transfer capital and income between an intermediate holding vehicle and the scheme by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the authorised fund manager should ensure the following:

(a) a record of inter-company debt is kept in order to provide an accurate audit trail; and

(b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the intermediate holding vehicle’s reasonable running costs (including tax).

(2) An intermediate holding vehicle should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the scheme’s investment objectives and policy.

(3) Wherever reasonably practicable, an intermediate holding vehicle should have the same auditor and accounting reference date as the scheme.

(4) The accounts of any intermediate holding vehicle should be consolidated into the annual and interim reports of the scheme.
(5) The *authorised fund manager* should provide sufficient information to enable the *depositary* to fulfil its duties under *COLL* in relation to the immovables held through an *intermediate holding vehicle*.

**Investment limits for immovables**

The following limits apply in respect of immovables held as part of *scheme property* of a *scheme*:

1. not more than 15% in value of the *scheme property* is to consist of any one immovable;

2. in (1), immovables within *COLL 5.6.18 R (4) (b) (Investment in property)* must be regarded as one immovable;

3. the figure of 15% in (1) may be increased to 25% once the immovable has been included in the *scheme property* in compliance with (1);

4. the income receivable from any one *group* in any accounting period must not be attributable to immovables comprising;
   (a) more than 25%; or
   (b) in the case of a government or public body more than 35%; of the value of the *scheme property*;

5. not more than 20% in value of the *scheme property* is to consist of immovables that are subject to a mortgage and any mortgage must not secure more than 100% of the value in *COLL 5.6.18 R (4)* (on the assumption the immovable is not mortgaged);

6. the aggregate value of:
   (a) mortgages secured on immovables under (5);
   (b) borrowing of the *scheme* under *COLL 5.6.22 R (5)*; and
   (c) any *transferable securities* that are not *approved securities*; must not at any time exceed 20% of the value of the *scheme property*;

7. not more than 50% in value of the *scheme property* is to consist of *immovables* which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment; and

8. no option may be granted to a third party to buy any immovable comprised in the *scheme property* unless the value of the relevant immovable does not exceed 20% of the value of the *scheme*.
property together with, where appropriate, the value of investments in:

(a) unregulated collective investment schemes; and
(b) any transferable securities which are not approved securities.

Standing independent valuer and valuation

(1) The following requirements apply in relation to the appointment of a valuer:

(a) the authorised fund manager must ensure that any immovables in the scheme property are valued by an appropriate valuer (standing independent valuer) appointed by the authorised fund manager; and
(b) the appointment must be made with the approval of the trustee or depositary at the outset and upon any vacancy.

(2) The standing independent valuer in (1) must be:

(a) for an AUT, independent of the manager and trustee; and
(b) for an ICVC, independent of the ICVC, the directors and the depositary.

(3) The following requirements apply in relation to the functions of the standing independent valuer:

(a) the authorised fund manager must ensure that the standing independent valuer values all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year;
(b) for the purposes of (a) any inspection in relation to adjacent properties of a similar nature may be limited to that of only one such representative property;
(c) the authorised fund manager must ensure that the standing independent valuer values the immovables, on the basis of a review of the last full valuation, at least once a month;
(d) if either the authorised fund manager or the depositary becomes aware of any matters that appear likely to:

(i) affect the outcome of a valuation of an immovable; or
(ii) cause the valuer to decide to value under (a) instead of under (c);

it must immediately inform the standing independent valuer of that matter;
(c) the *authorised fund manager* must use its best endeavours to ensure that any other *affected person* reports to the *standing independent valuer* immediately upon that *person* becoming aware of any matter within (d); and

(f) any valuation by the *standing independent valuer* must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but subject to COLL 6.3 (Valuation and pricing).

(4) In relation to an immovable:

(a) any valuation under COLL 6.3 (Valuation and pricing) has effect, until the next valuation under that *rule*, for the purposes of the value of immovables; and

(b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the *scheme property* unless it reasonably appears to the *authorised fund manager* to be legally enforceable.

In considering whether a valuation of overseas immovables by the *standing independent valuer* is made on an appropriate basis for the purpose of COLL 5.6.20 R (3) (f), the *authorised fund manager* should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.

**Stock lending**

A *non-UCITS retail scheme* may undertake *stock lending* in accordance with COLL 5.4 (Stock lending).

**Cash, borrowing, lending and other provisions**

The following *rules* in Chapter 5 apply to a *non-UCITS retail scheme*:

(1) COLL 5.2.7 R (Transferable securities);

(2) COLL 5.5.1 R (Application) and COLL 5.5.2 R (Table of application);

(3) COLL 5.5.3 R (Cash and near cash);

(4) COLL 5.5.4 R (1), COLL 5.5.4 R (2), COLL 5.5.4 R (3) and COLL 5.5.4 R (8) (General power to borrow);

(5) COLL 5.5.5 R (1) and COLL 5.5.5 R (2) (Borrowing limits);

(6) COLL 5.5.6 R (Restrictions on lending of money);
(7) COLL 5.5.7 R (1), (2) and (4) (Restrictions on lending of property other than money);

(8) COLL 5.5.8 R (General power to accept or underwrite placings); and

(9) COLL 5.5.9 R (Guarantees and indemnities).

Schemes replicating an index

(1) A non-UCITS retail scheme may invest up to 20% in value of the scheme property in shares and debentures which are issued by the same body where the aim of the investment policy of that scheme as stated in its most recently published prospectus is to replicate the performance or composition of an index within (2).

(2) The index must:
   (a) have a sufficiently diversified composition;
   (b) be a representative benchmark for the market to which it refers; and
   (c) be published in an appropriate manner.

(3) The limit in (1) may be raised for a particular scheme up to 35% in value of the scheme property, but only in respect of one body and where justified by exceptional market conditions.

Replication of the composition of an index shall be understood to be a reference to replication of the composition of the underlying assets of that index, including the use of techniques and instruments for the purpose of efficient portfolio management.

(2) The composition of an index is sufficiently diversified if its components adhere to the spread requirements in this section.

(3) An index is a representative benchmark if its provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

(4) An index is published in an appropriate manner if:
   (a) it is accessible to the public;
   (b) the index provider is independent from the index-replicating scheme; this does not preclude index providers and the scheme from forming part of the same group, provided that effective arrangements for the management of conflicts of interest are in place.
Non-UCITS retail schemes that are umbrellas

(1) In relation to a scheme which is an umbrella, the provisions in this section apply to each sub-fund as they would for a non-UCITS retail scheme.

(2) A sub-fund may invest in or dispose of units of another sub-fund of the same umbrella (the second sub-fund) only if the following conditions are satisfied:

(a) the second sub-fund does not hold units in any other sub-fund of the same umbrella;

(b) the conditions in COLL 5.2.16 R (Investment in other group schemes) and COLL 5.6.11 R (Investment in associated collective investment schemes) are complied with (for the purposes of this rule, COLL 5.2.16 R and COLL 5.6.11 R are to be read as modified by COLL 5.6.11 R (2));

(c) not more than 35% in value of the investing or disposing sub-fund is to consist of units of the second sub-fund; and

(d) the investing or disposing sub-fund must not be a feeder NURS to the second sub-fund.

Guidance on syndicated loans

(1) COLL 5.2.35 G (Guidance on syndicated loans) is equally applicable to investment by a non-UCITS retail scheme in a syndicated loan.

(2) Where a loan falls within the Glossary definition of a transferable security, investment in such a loan in the case of a non-UCITS retail scheme is subject to the spread requirements in COLL 5.6.7 R (Spread: general). AFMs also need to bear in mind that where such a transferable security does not meet the requirements of COLL 5.6.5 R (1) (Eligibility of transferable securities and money-market instruments for investment by a non-UCITS retail scheme), the scheme’s overall exposure to such loans will count towards the limit in COLL 5.6.5 R (2).

Qualifying collective investment schemes for feeder NURS

The authorised fund manager of a feeder NURS must ensure that the feeder NURS does not invest in the qualifying master scheme, unless the qualifying master scheme meets both of the requirements in (1) and (2):

(1) the qualifying master scheme:

(a) satisfies the conditions necessary for it to enjoy the rights conferred by the UCITS Directive; or

(b) is a recognised scheme; or

(c) is a non-UCITS retail scheme; and
(2) where the *qualifying master scheme* is an *umbrella*, the provisions in COLL 5.6.7 R (Spread: general) apply to each sub-fund as if it were a separate scheme.
5.7 Investment powers and borrowing limits for NURS operating as FAIFs

Application

(1) This section applies to the authorised fund manager and the depositary of a non-UCITS retail scheme operating as a FAIF and to an ICVC which is a non-UCITS retail scheme operating as a FAIF.

(2) Where this section refers to:
   (a) a rule or guidance in Section 5.1 to Section 5.6, these rules and guidance, and any rules and guidance to which they refer, must be read as if a reference to a UCITS scheme or non-UCITS retail scheme were a reference to a non-UCITS retail scheme operating as a FAIF;
   (b) a second scheme, and the second scheme is a feeder scheme which (in respect of investment in units in collective investment schemes) is dedicated to units in a single collective investment scheme, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which the feeder scheme's master scheme invests; and
   (c) a second scheme, and the second scheme is a master scheme to which (in respect of investment in units in collective investment schemes) the relevant non-UCITS retail scheme operating as a FAIF is dedicated, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which that master scheme invests.

Purpose

(1) This section contains rules on the types of permitted investments and any relevant limits with which non-UCITS retail schemes operating as FAIFs must comply. These rules allow for the relaxation of certain investment and borrowing powers from the requirements for non-UCITS retail schemes under Section 5.6.

(2) One example of the different investment and borrowing powers under the rules in this section for non-UCITS retail schemes operating as FAIFs is the power to invest up to 100% of the value of the scheme property in schemes to which Section 5.7.7 R (Investment in collective investment schemes) applies.
In order to ensure adequate unit holder protection, the authorised fund manager is required to implement certain due diligence procedures in respect of investment in second schemes.

### Applicable rules in COLL 5.6

The following rules and guidance in COLL 5.6 (Investment powers and borrowing limits for non-UCITS retail schemes) apply to the authorised fund manager and the depositary of a non-UCITS retail scheme operating as a FAIF and to an ICVC which is a non-UCITS retail scheme operating as a FAIF:

1. COLL 5.6.3 R;
2. COLL 5.6.5 R to 5.6.6 R;
3. COLL 5.6.8 R to 5.6.9 R; and
4. COLL 5.6.11 R to 5.6.24 R.

### Investment powers: general

1. The scheme property of a non-UCITS retail scheme operating as a FAIF may, subject to the rules in this section, comprise any assets or investments to which it is dedicated.

2. For an ICVC, the scheme property may also include movable or immovable property that is necessary for the direct pursuit of the ICVC’s business of investing in those assets or investments.

3. The scheme property must be invested only in accordance with the relevant provisions in this section that are applicable to that non-UCITS retail scheme operating as a FAIF and within any upper limit specified in this section.

4. The instrument constituting the scheme may restrict the investment powers of a scheme further than the relevant restrictions in this section.

5. The scheme property may only, except where otherwise provided in the rules in this section, consist of any one or more of:
   a. transferable securities;
   b. money market instruments;
   c. units in collective investment schemes permitted under COLL 5.7.7 R (Investment in collective investment schemes);
(d) *derivatives* and forward transactions permitted under COLL 5.6.13 R (Permitted transactions (derivatives and forwards));

(e) *deposits* permitted under COLL 5.2.26 R (Investment in deposits);

(f) immovables permitted under COLL 5.6.18 R (Investment in property) to COLL 5.6.19 R (Investment limits for immovables); and

(g) gold up to a limit of 10% in value of the *scheme property*.

**Spread: general**

1. This *rule* does not apply in respect of *government and public securities*.

2. Not more than 20% in value of the *scheme property* is to consist of *deposits* with a single body.

3. Not more than 10% in value of the *scheme property* is to consist of *transferable securities* or *approved money-market instruments* issued by any single body subject to COLL 5.6.23 R (Schemes replicating an index).

4. The limit of 10% in (3) is raised to 25% in value of the *scheme property* in respect of *covered bonds*.

5. In applying (3) *certificates representing certain securities* are to be treated as equivalent to the underlying *security*.

6. The exposure to any one counterparty in an *OTC derivative* transaction must not exceed 10% in value of the *scheme*.

7. Except for a feeder *scheme* which (in respect of investment in *units* in *collective investment schemes*) is *dedicated* to the *units* of a master *scheme*, not more than 35% in value of the *scheme* is to consist of the *units* of any one *scheme*.

8. For the purpose of calculating the limit in (6), the exposure in respect of an *OTC derivative* may be reduced to the extent that collateral is held in respect of it if the collateral meets each of the conditions specified in (9).

9. The conditions referred to in (8) are that the collateral:

   (a) is marked-to-market on a daily basis and exceeds the value of the amount at risk;

   (b) is exposed only to negligible risks (e.g. government bonds of first credit rating or cash) and is liquid;
(c) is held by a third party custodian not related to the provider or is legally secured from the consequences of a failure of a related party; and

(d) can be fully enforced by the *non-UCITS retail scheme* operating as a FAIF at any time.

(10) For the purpose of calculating the limit in (6), OTC derivative positions with the same counterparty may be netted provided that the netting procedures:

(a) comply with the conditions set out in Part 7 (Contractual netting (Contracts for novation and other netting agreements)) of Annex III to the *Banking Consolidation Directive*; and

(b) are based on legally binding agreements.

(11) In applying this rule, all derivatives transactions are deemed to be free of counterparty risk if they are performed on an exchange where the *clearing house* meets each of the following conditions:

(a) it is backed by an appropriate performance guarantee; and

(b) it is characterised by a daily mark-to-market valuation of the *derivative* positions and an at least daily margining.

(12) For the purposes of this rule a single body is:

(a) in relation to *transferable securities* and money market instruments, the *person* by whom they are issued; and

(b) in relation to *deposits*, the *person* with whom they are placed.

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**Guidance on spread: general**

(1) COL 5.7.5R (8) to (11) replicate the provisions of Article 5 of the Commission Recommendation 2004/383/EC of 27 April 2004 on the use of financial derivative instruments for undertakings for collective investment in transferable securities, so as to enable *non-UCITS retail schemes* to benefit from the same flexibility.

(2) The attention of *authorised fund managers* is specifically drawn to condition (d) in COL 5.7.5R (9) under which the collateral has to be legally enforceable at any time. It is the FCA’s view that it is advisable for an *authorised fund manager* to undertake a legal due diligence exercise before entering into any financial collateral arrangement. This is particularly important where the collateral arrangements in question have a cross-border dimension. The *depositary* will also need to exercise reasonable care to review the collateral arrangements in accordance with its duties under COL 6.6.4 R (General duties of the depositary).
In applying the spread limit of 20% in value of scheme property which may consist of deposits with a single body, all uninvested cash comprising capital property that the depositary holds should be included in calculating the total sum of the deposits held by it on behalf of the scheme.

### Investment in collective investment schemes

A non-UCITS retail scheme operating as a FAIF must not invest in units in a collective investment scheme (second scheme) unless the second scheme is a scheme which satisfies the criteria in COLL 5.6.10 R (1) (a) to (d) or meets each of the requirements at (1) to (4):

1. the second scheme operates on the principle of the prudent spread of risk;
2. the second scheme is prohibited from investing more than 15% in value of the property of that scheme in units in collective investment schemes or, if there is no such prohibition, the non-UCITS retail scheme's authorised fund manager is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made;
3. the participants in the second scheme must be entitled to have their units redeemed in accordance with the scheme at a price:
   - related to the net value of the property to which the units relate; and
   - determined in accordance with the scheme; and
4. where the second scheme is an umbrella, the provisions in (1) to (3) and COLL 5.7.5 R (Spread: general) apply to each sub-fund as if it were a separate scheme.

### Feeder schemes

Feeder schemes which (in respect of investment in units in collective investment schemes) are dedicated to units in a single collective investment scheme must, in addition to the investment in the master scheme, only hold cash or near cash to maintain sufficient liquidity to enable the scheme to meet its commitments, such as redemptions. Feeder schemes may also use techniques and instruments for the purpose of efficient portfolio management, where appropriate, such as forward foreign exchange transactions entered into for the purpose of reducing the effect of fluctuations in the rate of exchange between relevant currencies.

### Due diligence requirements

1. A non-UCITS retail scheme operating as a FAIF must not invest in units in schemes in COLL 5.7.7R (1) to (3) ('second schemes') unless the authorised fund manager has carried out appropriate due diligence on each of the second schemes and:
(a) is satisfied, on reasonable grounds and after making all reasonable enquiries, that each of the second schemes complies with relevant legal and regulatory requirements;

(b) has taken reasonable care to determine that:

(i) the property of each of the second schemes is held in safekeeping by a third party, which is subject to prudential regulation and independent of the investment manager of the second scheme;

(ii) the calculation of the net asset value of each of the second schemes and the maintenance of their accounting records is segregated from the investment management function; and

(iii) each of the second schemes is regularly audited by an independent auditor in accordance with international standards on auditing.

(2) The authorised fund manager of a non-UCITS retail scheme operating as a FAIF invested in one or more second schemes must carry out appropriate due diligence as detailed in (1) on those schemes on an ongoing basis.

The authorised fund manager of a non-UCITS retail scheme operating as a FAIF which is a feeder scheme must ensure that:

(1) its master scheme; and

(2) where its master scheme is itself a feeder scheme, any scheme into which that master scheme invests, operates on a basis that is consistent with the rules in this section notwithstanding any due diligence previously carried out which suggested that those schemes would so operate.

An authorised fund manager carrying out due diligence for the purpose of the rules in this section should make enquiries or otherwise obtain information needed to enable him properly to consider:

(1) whether the experience, expertise, qualifications and professional standing of the second scheme’s investment manager is adequate for the type and complexity of the second scheme;

(2) the adequacy of the regulatory, legal and accounting regimes applicable to the second scheme and its investment manager;

(3) whether the second scheme, its investment manager and administrator have complied with their legal and regulatory obligations, including but not limited to an evaluation of the investment manager’s written policies with respect to such compliance;
(4) the extent to which the second scheme’s investment manager adheres to guidance and codes which amount to good practice in the industry;

(5) the adequacy of the second scheme’s systems, controls, governance, accounting, administration, business continuity, disaster recovery, safekeeping, custody and trading and execution arrangements;

(6) the extent to which the property of the second scheme may be rehypothecated and the potential impact of such rehypothecation on the non-UCITS retail scheme operating as a FAIF;

(7) the adequacy of the second scheme’s risk management process, in particular:
   (a) the methodology by which risk is measured and its practical adequacy in the light of the limitations inherent in risk measures (such as value at risk), including where appropriate, reference to market risk, credit risk (including counterparty credit risk), liquidity risk, operational risk and outsourcing risk;
   (b) the extent to which the second scheme’s investment manager carries out stress testing and backtesting, to determine how potential changes in market conditions could impact on the value of the second scheme’s portfolio;
   (c) the reporting, escalation and review processes within the second scheme’s governance structure;
   (d) the manner in which risks arising from services provided by third parties are managed, including where those third parties provide prime brokerage, administration, auditing, valuation, risk monitoring, business continuity and disaster recovery services; and
   (e) the management of key person risk;

(8) the adequacy of the second scheme’s investment strategy and trading philosophy;

(9) the implications of currency convertibility (if any);

(10) whether the second scheme produces a valuation that is sufficiently accurate for the authorised fund manager to be reasonably satisfied that the price of the FAIF’s units can be calculated in accordance with COLL 6.3 (Valuation and pricing), including but not limited to an assessment of:
   (a) the roles and responsibilities of each of the parties involved in the second scheme’s valuation process and the extent to which these are defined;
   (b) the extent to which the valuation process is segregated or is functionally separate from the second scheme’s investment manager where the second scheme is not subject to completely independent valuation by a third party;
   (c) the methods used by the second scheme for the valuation of each part of its property including those assets which are difficult to value or which are not subject to independent market pricing;
   (d) the extent to which the investment manager of the second scheme does not rely on prices from external sources, and its written policies relating to this;
   (e) the manner in which the investment manager of the second scheme selects and monitors the adequacy of its pricing sources;
(f) the extent to which the investment manager of the second scheme operates a valuation policy that is consistent and fair to both subscribing and redeeming investors from the second scheme;

(11) the level of liquidity, redemption policy and dealing arrangements offered by the second scheme and whether they are sufficient for the investing scheme to be able to meet its obligations in respect of redemptions; wherever appropriate the authorised fund manager may need to consider how many second schemes the investing scheme should invest in to ensure that the scheme can meet its redemption obligations; and

(12) any relevant conflicts of interest that may arise out of the relationships of the second scheme’s investment manager with other relevant parties and in particular detract from the integrity of the second scheme’s decision-making process, including:
(a) relationships with brokers or service providers;
(b) conflicts that may be generated by fee structures;
(c) use of dealing commission to purchase goods or services;
(d) conflicts that may arise from the second scheme’s investment manager managing that scheme alongside other business; and
(e) the conflicts of interest that may arise (if any) between the second scheme’s investment manager and any person instructed to carry out due diligence on the authorised fund manager’s behalf.

Non-UCITS retail schemes that are umbrellas with FAIF sub-funds

In relation to a non-UCITS retail scheme which is an umbrella comprised of sub-funds which are:

(1) FAIFs; or

(2) a mixture of FAIFs and standard non-UCITS retail schemes;
the provisions in this section apply to each sub-fund operating as a FAIF as they would to a separate scheme.
5.8 Investment powers and borrowing limits for feeder UCITS

Application

(1) This section applies to:
   (a) the authorised fund manager of a feeder UCITS;
   (b) the depositary of a feeder UCITS; and
   (c) an ICVC which is a feeder UCITS;
   where the scheme is a UCITS scheme.

(2) Where this section refers to a rule or guidance in COLL 5.1 to COLL 5.5, those rules and guidance, and any rules and guidance to which they refer, must be read as if a reference to a UCITS scheme were a reference to a feeder UCITS.

(3) Where the sub-fund of a UCITS scheme is a feeder UCITS, the provisions in this section apply to each sub-fund as they would for an authorised fund.

Permitted types of scheme property

A feeder UCITS must invest at least 85% in value of the scheme property in units of a single master UCITS.

[Note: article 58(1) of the UCITS Directive]

Balance of scheme property: investment restrictions on a feeder UCITS

A feeder UCITS may hold up to 15% in value of the scheme property in one or more of the following:

(1) cash or near cash in accordance with COLL 5.5.3 R (Cash and near cash);

(2) derivatives and forward transactions which may be used only for the purposes of hedging and in accordance with the rules set out at COLL 5.8.7 R (Other provisions applicable to a feeder UCITS); and
(3) (for an ICVC) movable and immovable property which is essential for the direct pursuit of the business.

[Note: article 58(2) first subparagraph of the UCITS Directive]

Exposure to derivatives

In calculating the global exposure of a feeder UCITS to derivatives and forward transactions in accordance with COLL 5.3.3A R (Cover for investment in derivatives and forward transactions), the feeder UCITS must combine its own direct exposure under COLL 5.8.3 R (2) with either:

(1) the master UCITS’ actual exposure to derivatives and forward transactions in proportion to the feeder UCITS’ investment into the master UCITS; or

(2) the master UCITS’ potential maximum global exposure to derivatives and forward transactions provided for in the master UCITS’ instrument constituting the scheme or its prospectus in proportion to the feeder UCITS investment into the master UCITS.

[Note: article 58(2) second subparagraph of the UCITS Directive]

Prudent spread of risk

An authorised fund manager must ensure that, to the extent that the feeder UCITS invests in assets other than units of a master UCITS, the feeder UCITS complies with COLL 5.2.3 R (1) (Prudent spread of risk).

Investment powers: general

The scheme property of a feeder UCITS must be invested only in accordance with the relevant provisions in this section and up to any maximum limit so stated, but the instrument constituting the scheme may restrict the investment and borrowing powers of a scheme further than the relevant restrictions in this section.

Other provisions applicable to a feeder UCITS

The following rules and guidance in COLL 5.1 (Introduction), COLL 5.2 (General investment powers and limits for UCITS schemes) and COLL 5.5 (Cash, borrowing, lending and other provisions) apply to the authorised fund manager of a UCITS scheme which is a feeder UCITS and to an ICVC which is a feeder UCITS:

(1) COLL 5.1.1 R (Application), COLL 5.1.2 G (1) (Purpose) and COLL 5.1.3 R (Treatment of obligations);

(2) COLL 5.2.1 R (Application), COLL 5.2.2 R (Table of application) and COLL 5.2.2A G;
(3) ■ COLL 5.2.5 R (Valuation) and ■ COLL 5.2.6 G (Valuation guidance);

(4) ■ COLL 5.2.10 R (Eligible markets: requirements);

(5) ■ COLL 5.2.11 R (7) (Spread: general);

(6) ■ COLL 5.2.11B R (Counterparty risk and issuer concentration);

(7) ■ COLL 5.2.15 R (1) (Investment in associated collective investment schemes);

(8) ■ COLL 5.2.19 R (1), ■ COLL 5.2.19 R (2) and ■ COLL 5.2.19 R (4) (Derivatives: general);

(9) ■ COLL 5.2.20 R (Permitted transactions (derivatives and forwards));

(10) ■ COLL 5.2.20A R (Financial indices underlying derivatives),
■ COLL 5.2.20B G (1) and ■ COLL 5.2.20B G (4) (Guidance on financial indices underlying derivatives);

(11) ■ COLL 5.2.21 R (Transactions for the purchase of property);

(12) ■ COLL 5.2.22 R (Requirement to cover sales) and ■ COLL 5.2.22A G (Guidance on requirement to cover sales);

(13) ■ COLL 5.2.23 R (OTC Transactions in derivatives), ■ COLL 5.2.23A R and ■ COLL 5.2.23B R);

(14) ■ COLL 5.2.23C R (Valuation of OTC derivatives);

(15) ■ COLL 5.2.26 R (Investment in deposits);

(16) ■ COLL 5.5.1 R to ■ COLL 5.5.7 A G (Cash, borrowing, lending and other provisions); and

(17) ■ COLL 5.5.9 R (Guarantees and indemnities) and ■ COLL 5.5.10 G (Guidance on restricting payments).
5.9 Investment powers and other provisions for money market funds

Application

This section applies to the authorised fund manager and the depositary of an authorised fund and to an ICVC which is a UCITS scheme or a non-UCITS retail scheme operating as a money market fund or a short-term money market fund.

Explanation

(1) This section contains rules on the types of permitted investments which schemes operating as short-term money market funds and money market funds may invest in. These rules are in addition to the requirements in ■ COLL 5.2 (for UCITS schemes) and ■ COLL 5.6 (for non-UCITS retail schemes).

(2) The purpose of these rules is to protect consumers by ensuring that an authorised fund or sub-fund which describes itself as a 'money market' fund operates in a more restricted fashion, and aims to maintain the capital value of the fund and provide a return in line with money market rates.

Investment conditions: short-term money market funds

A short-term money market fund must satisfy the following conditions:

(1) its primary investment objective must be to maintain the principal of the scheme and aim to provide a return in line with money market rates;

(2) it must invest only in approved money-market instruments and deposits with credit institutions;

(3) it must, on an ongoing basis, ensure the approved money-market instruments it invests in are of high quality, as determined by the authorised fund manager;

(4) it must:

(a) provide daily net asset value and price calculation and daily subscription and redemption of units; or
(b) where it is a non-UCITS retail scheme marketed solely through employee savings schemes and to a specific category of investor that is subject to divestment restrictions, provide weekly subscription and redemption opportunities to investors;

(5) it must limit its investment in securities to those with a residual maturity until the legal redemption date of less than or equal to 397 days;

(6) it must ensure that its scheme property has a weighted average maturity of no more than 60 days;

(7) it must ensure that its scheme property has a weighted average life of no more than 120 days;

(8) it must not take direct or indirect exposure to equity or commodities, including via derivatives;

(9) it must only use derivatives in line with the money market investment strategy of the scheme and where using derivatives that give exposure to foreign exchange must do so only for the purposes of hedging;

(10) it must only invest in non-base currency securities where its exposure is fully hedged;

(11) it must limit its investment in other collective investment schemes as follows:

(a) if it is a UCITS scheme, collective investment schemes which satisfy the requirements of \textsection COLL 5.2.13 R; or

(b) if it is a non-UCITS retail scheme, collective investment schemes which satisfy the requirements of \textsection COLL 5.6.10 R;

which meet the definition of a "Short-Term Money Market Fund" in CESR's guidelines on a common definition of European money market funds; and

(12) it must aim to maintain a fluctuating net asset value or a constant net asset value.

[Note: box 2, paragraphs 1, 2, 3 (first sentence), 5, 6, 7, 8, 11, 12 and 13 of CESR's guidelines on a common definition of European money market funds]

For the purposes of \textsection COLL 5.9.3R (12), a constant net asset value should be taken as referring to an unchanging face net asset value where income in the fund is accrued daily and can either be paid out to the unitholder or used to purchase more units in the scheme. An authorised fund with a constant net asset value should generally value scheme property on an amortised cost basis which takes the acquisition cost of the security and adjust this value for amortisation of premiums (or discounts) until maturity.
5.9.5 In addition to satisfying the conditions in COLL 5.9.3R (1), (2), (3), (4), (8), (9) and (10), a money market fund must:

1. limit investment in securities to those with a residual maturity until the legal redemption date of less than or equal to two years, provided that the time remaining until the next interest rate reset date is less than or equal to 397 days. Floating rate securities should reset to a money market rate or index;

2. ensure its scheme property has a weighted average maturity of no more than 6 months;

3. ensure its scheme property has a weighted average life of no more than 12 months;

4. limit its investment in other collective investment schemes as follows:
   a. if it is a UCITS scheme, collective investment schemes which satisfy the requirements of COLL 5.2.13 R (Investment in collective investment schemes); or
   b. if it is a non-UCITS retail scheme, collective investment schemes which satisfy the requirements of COLL 5.6.10 R (Investment in collective investment schemes);

   which meet the definition of a "Money Market Fund" or a "Short-Term Money Market Fund" in CESR’s guidelines on a common definition of European money market funds; and

5. have a fluctuating net asset value.

5.9.6 In determining whether approved money-market instruments are high quality in accordance with COLL 5.9.3R (3), the authorised fund manager must take into account a range of factors including, but not limited to:

1. the credit quality of the instrument; an instrument will be considered not to be high quality unless it is:
   a. an approved money-market instrument which has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument or, if the instrument is not rated, it is of an
equivalent quality as determined by the authorised fund manager's internal rating process; or

(b) for a money market fund, an approved money-market instrument of investment grade quality which is issued or guaranteed by one of the following:

(i) a central authority of an EEA State or, if the EEA State is a federal state, one of the members making up the federation; or

(ii) a regional or local authority of an EEA State; or

(iii) the European Central Bank or a central bank of an EEA State; or

(iv) the European Union or the European Investment Bank;

(2) the nature of the asset class represented by the instrument;

(3) for structured financial instruments, the operational risk and counterparty risk inherent within the structured financial transaction; and

(4) the liquidity profile.

[Note: box 2, paragraphs 3 (second sentence) and 4 and box 3, paragraph 2 of CESR's guidelines on a common definition of European money market funds]

Calculating weighted average life and weighted average maturity

(1) When calculating the weighted average life for securities (including structured financial instruments) for the purposes of ■ COLL 5.9.3R (7) and ■ COLL 5.9.5R (3), the maturity calculation must be based on either:

(a) the residual maturity of the instruments; or

(b) if the financial instrument embeds a put option, the exercise date of the put option if the following conditions are fulfilled at all times;

(i) the put option can be freely exercised by the authorised fund manager at its exercise date;

(ii) the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and

(iii) the investment strategy of the scheme implies that there is a high probability that the option will be exercised at the next exercise date.
(2) Where calculating the *weighted average life* for floating rate securities and structured financial instruments, the security’s stated final maturity should be used and not the interest rate reset dates.

(3) When calculating the *weighted average life* and *weighted average maturity* for the purposes of ■ COL 5.9.3R (6) and ■ (7), and ■ COL 5.9.5R (2) and ■ (3), an *authorised fund manager* must take into account the impact of derivatives, deposits and efficient portfolio management.

[Note: definition of "weighted average life" (second sentence) and box 2, paragraphs 9 and 10 of CESR’s guidelines on a common definition of European money market funds]

**CESR guidelines**

In addition to the parts of the CESR’s guidelines on a common definition of European money market funds specifically referred to in this section, the *authorised fund managers* should have regard to the other parts of those guidelines when applying the *rules* in this section.
Chapter 6

Operating duties and responsibilities
6.1 Introduction and Application

Application

This chapter applies to:

1. an authorised fund manager of an AUT or an ICVC;
2. any other director of an ICVC;
3. a depositary of an AUT or an ICVC; and
4. an ICVC,

where such AUT or ICVC is a UCITS scheme or a non-UCITS retail scheme.

Purpose

This chapter helps in achieving the statutory objective of protecting consumers. It provides the operating framework within which the authorised fund must be operated on a day-to-day basis to ensure that clients are treated fairly when they become, remain or as they cease to be unitholders.

Explanation of this chapter

1. The authorised fund manager operates the scheme on a day-to-day basis. Its operation is determined by the rules in this chapter, which require appropriate powers in the instrument constituting the scheme or refer to the need to state the relevant operating procedures in the prospectus of the scheme.

2. The authorised fund manager does not necessarily have to carry out all the activities it is responsible for and may delegate functions to other persons. The rules in this chapter set out the parameters of such delegation.

3. The depositary’s duty is, generally speaking, to ensure the safe custody of scheme property and to oversee certain functions of the authorised fund manager (most notably the pricing and dealing function and investment powers). The oversight responsibilities for a trustee of an AUT are similar to, but not the same as, the oversight responsibilities of the depositary of an ICVC. These differences result from the different legal structure of the authorised funds and the trustee’s obligations under trust law.
6.2 Dealing

Application

This section applies to an authorised fund manager, a depositary, an ICVC and any other director of an ICVC.

Purpose

(1) This section helps in achieving the statutory objective of securing an appropriate degree of protection for consumers. In accordance with Principle 6, this section is also concerned with ensuring the authorised fund manager pays due regard to its clients’ interests and treats them fairly.

(2) An authorised fund manager is responsible for arranging for the issue and the cancellation of units for the authorised fund, and is permitted to sell and redeem units for its own account. The rules in this section are intended to ensure that the authorised fund manager treats the authorised fund fairly when arranging for the issue or cancellation of units, and treats clients fairly when they purchase or sell units.

(3) This section also sets out common standards for how the amounts in relation to unit transactions are to be paid. These arrangements include the initial offer of units, the exchange of units for scheme property and issues and cancellations of units by an ICVC, or by the trustee of an AUT, carried out directly with the unitholder.

(4) This section also sets out rules and guidance relating to the authorised fund manager’s controls over the issue and cancellation of units including any box holdings.

(5) The requirements in this section are to be applied separately to each sub-fund of a scheme which is an umbrella, and, if appropriate, the currency of a sub-fund may be used instead of the base currency of the umbrella.

Initial offers

(1) During the initial offer period, units may only be issued at the initial price.

(2) The length of any initial offer should not be unreasonable when considered alongside the characteristics of the authorised fund.
(3) The *authorised fund manager* must, as soon as practicable after receiving the *initial price* from the purchaser and no later than the fourth *business day* following the end of the *initial offer*, pay the *depositary* in respect of any *unit* it has agreed to *sell* during the period of the *initial offer*:

(a) in the case of a *single-priced authorised fund*, the *initial price* of that *unit*; or

(b) in the case of a *dual-priced authorised fund*, the *initial price* of that *unit* less, where relevant, an amount not exceeding the amount of any *preliminary charge* stated in the *prospectus*.

(4) The period of the *initial offer* comes to an end if the *authorised fund manager* reasonably believes the *price* that would reflect the current value of the *scheme property* would vary by more than 2% from the *initial price*.

**Initial offer: guidance**

(1) Details of any *initial offer* period must be provided in the relevant *prospectus* as described in COLL 4.2.5R (17)(h) (Table: contents of the prospectus).

(2) It may be appropriate that the *initial offer* for a *scheme* operating limited *issue* or *limited redemption arrangements*, or intending to invest in illiquid *assets*, is longer than one for a *scheme* which does not have these features.

**Issue and cancellation of units by an ICVC**

(1) *Units* in an *ICVC* are *issued* or *cancelled* by the *ACD* making a record of the *issue* or *cancellation* and of the number of the *units* of each *class* concerned, and cannot be *issued* or *cancelled* in any other manner, unless COLL 3.2.6R (11) (Table: contents of the instrument constituting the scheme) applies.

(2) The time of the *issue* or *cancellation* under (1) is the time when the record is made.

**Issue and cancellation of units in an AUT**

(1) The *trustee* must *issue* or *cancel units* in an *AUT* when instructed by the *manager*.

(2) Any instructions given by the *manager* must state, for each *class* of *unit* to be *issued* or *cancelled*, the number to be *issued* or *cancelled*, expressed either as a number of *units* or as an amount in value (or as a combination of the two).

(3) If the *trustee* is of the opinion that it is not in the interests of *unitholders* that any *units* should be *issued* or *cancellation* or that to do so would not be in accordance with the *trust deed*
or prospectus, it must notify the manager of that fact and it is then relieved of the obligation to issue or cancel those units.

Issue and cancellation of units in multiple classes

If an authorised fund has two or more classes of unit in issue, the authorised fund manager may treat any or all of those classes as one for the purpose of determining the number of units to be issued or cancelled by reference to a particular valuation point, if:

(1) the depositary gives its prior agreement; and

(2) the relevant classes:
   (a) have the same entitlement to participate in, and the same liability for charges, expenses and other payments that may be recovered from, the scheme property; or
   (b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the price of the units in each class is calculated by reference to undivided shares in the scheme property.

Issue and cancellation of units through an authorised fund manager

(1) The authorised fund manager may require, on agreement with the depositary, or may permit, on the request of the investor, direct issues and cancellations of units by an ICVC or by the trustee of an AUT.

(2) If (1) applies:
   (a) the instrument constituting the scheme must provide for this; and
   (b) the prospectus must provide details of the procedure to be followed which must be consistent with the rules in this section.

Controls over the issue and cancellation of units

(1) An authorised fund manager must ensure that at each valuation point there are at least as many units in issue of any class as there are units registered to unitholders for that class.

(2) An authorised fund manager must not:
   (a) for an AUT, when giving instructions to the trustee for the issue or cancellation of units; or
   (b) for an ICVC, when arranging for the issue or cancellation of units;
do, or omit to do, anything that would, or might, confer on itself or an associate a benefit or advantage at the expense of a unitholder or a potential unitholder.

(3) For the purpose of (1), the authorised fund manager may take into account instructions to redeem units at the following valuation point received before any time agreed with the depositary for such purpose.

Controls over the issue and cancellation of units - guidance

(1) As the authorised fund manager normally controls the issue, cancellation, sale and redemption of an authorised fund’s units, it occupies a position that could, without appropriate systems and controls, involve a conflict of interest between itself and its clients.

(2) SYSC 3.1.1 R (Systems and controls) requires that a firm take reasonable care to establish and maintain such systems and controls as are appropriate to its business and Principle 8 requires a firm to manage conflicts of interest between itself and a customer fairly.

(3) To manage the conflict of interest that arises, when an authorised fund manager gives an instruction to issue or cancel units, the price of the units should be calculated at the valuation point before or after the instruction has been given, in accordance with (4).

(4) An authorised fund manager should agree a period of time with the depositary during which it will give instructions to issue or cancel units. Where the authorised fund manager operates a box with the principal aim of making a profit, this period will be short (for example, two hours); otherwise a longer period (for example, up to the next valuation point but in all cases within 24 hours) may be acceptable, provided the principles in (2) are followed.

(5) The last valuation point should be used for the pricing of units where instructions are given before the expiry of the period of time agreed in (4); otherwise the next valuation point should be used.

(6) Where an in specie issue or cancellation occurs it should be undertaken using the next valuation point’s price.

Modification to number of units issued or cancelled

(1) Any instruction for the issue or cancellation of units under COLL 6.2.5 R (Issue and cancellation of units by an ICVC) or COLL 6.2.6 R (Issue and cancellation of units in an AUT) may be modified but only if the depositary agrees and has taken reasonable care to determine that:

(a) the modification corrects an error in the instruction; and
(b) the error is an isolated one.
(2) Any error in (1) must be corrected within the payment period applicable under \(\text{COLL 6.2.13 R (Payment for units issued)}\) or \(\text{COLL 6.2.14 R (Payment for cancelled units)}\).

### Compensation for box management errors

(1) Where the *authorised fund manager* has not complied with
\(\text{COLL 6.2.8 R (1) (Controls over the issue and cancellation of units)}\), it must correct the error as soon as possible and must reimburse the *authorised fund* any costs it may have incurred in correcting the position.

(2) The *authorised fund manager* need not reimburse the *authorised fund* when:

- (a) the amount under (1) is not, in the depositary's opinion, material to the *authorised fund*;
- (b) the *authorised fund manager* can demonstrate that it has effective controls in place over box management, including all of the areas that affect the figures which are included in the box management calculations; and
- (c) the requirements of \(\text{COLL 6.2.10 R (Modification to number of units issued or cancelled)}\) are complied with.

### Box management errors guidance

Explanatory table: This table belongs to \(\text{COLL 6.2.2 G (4) (Purpose)}\).

**Correction of box management errors**

1. **Controls by authorised fund managers**
   
   An authorised fund manager needs to be able to demonstrate that it has effective controls over:
   - (1) its calculations of what *units* are owned by it (its 'box'); and
   - (2) compliance with \(\text{COLL 6.2.8 R which is intended to prevent a negative box}\).

2. **Controls by depositaries**
   
   - (1) Under \(\text{COLL 6.6.4 (General duties of the depositary)}\), a *depositary* should take reasonable care to ensure that a *scheme* is managed in accordance with \(\text{COLL 6.2 (Dealing)}\) and \(\text{COLL 6.3 (Pricing and valuation)}\).
   - (2) A *depositary* should therefore make a regular assessment of the *authorised fund manager's* box management procedures (including supporting systems) and controls. This should include reviewing the *authorised fund manager's* controls and procedures when the *depositary* assumes office, on any significant change and on a regular basis, to ensure that a series of otherwise minor changes do not have a cumulative and a significant effect on the accuracy of the controls and procedures.

3. **Recording and reporting of box management errors**
   
   - (1) An *authorised fund manager* should record all errors which result in a breach of \(\text{COLL 6.2.8 R (Controls over the issue and cancellation of units)}\) and as soon as an error is discovered, the *authorised fund manager* should report the fact to the
A depositary should report material box management errors to the FCA immediately. Materiality should be determined by taking into account a number of factors including:

(a) the implications of the error for the sufficiency of controls put into place by the authorised fund manager;
(b) the significance of any breakdown in the authorised fund manager’s management controls or other checking procedures;
(c) the significance of any failure of systems or back-up arrangements;
(d) the duration of an error; and
(e) the level of compensation due to the scheme, and an authorised fund manager’s ability (or otherwise) to meet claims for compensation in full.

A depositary should also make a return to the FCA (in the manner prescribed by SUP 16.6.8 R) on a quarterly basis.

Payment for units issued

(1) The authorised fund manager must, by the close of business on the fourth business day following the issue of any units, arrange for payment to the trustee or the ICVC of:

(a) in the case of a single-priced authorised fund, the price of the units and any payments required under COLL 6.3.7 R (SDRT provision) and COLL 6.3.8 R (Dilution); or

(b) in the case of a dual-priced authorised fund, the issue price of the units and any payment required under COLL 6.3.7 R.

(2) The authorised fund manager must make the payment referred to in (1) in cash or cleared funds unless COLL 6.2.15 R (In specie issue and cancellation) applies.

(3) Where the authorised fund manager has not complied with (1), it must reimburse the authorised fund for any lost interest unless the amount involved is not, in the depositary’s opinion, material to the authorised fund.

Payment for cancelled units

(1) On cancelling units the authorised fund manager must, before the expiry of the fourth business day following the cancellation of the units or, if later, as soon as practicable after delivery to the trustee or the ICVC of such evidence of title to the units as it may reasonably require, require the depositary to pay:

(a) in the case of a single-priced authorised fund, the price of the units (less any deduction required under COLL 6.3.7 R and COLL 6.3.8 R; or
(b) in the case of a dual-priced authorised fund, the cancellation price of the units (less any deduction required under COLL 6.3.7 R);

to the authorised fund manager or, where relevant, the unitholder or, for a relevant pension scheme, in accordance with the relevant provisions of the trust deed.

(2) If the authorised fund manager has not ensured that the scheme property includes or will include sufficient cash in the appropriate currency (or a sufficient facility to borrow without infringing any restriction in COLL 5 (Investment and borrowing powers)) within the period in (1), that period is extended, for any relevant currency, until the shortage is rectified.

(3) If (2) applies, the authorised fund manager must take reasonable steps to rectify the currency shortage as quickly as possible.

(4) This rule does not apply where COLL 6.2.15 R is in operation.

(5) Nothing in this section requires an ICVC, a depositary or an authorised fund manager to part with money or to transfer scheme property for a cancellation or redemption of units where any money due on the earlier issue or sale of those units has not been received.

In specie issue and cancellation

The depositary may take into or pay out of scheme property assets other than cash as payment for the issue or cancellation of units but only if:

1. it has taken reasonable care to ensure that the property concerned would not be likely to result in any material prejudice to the interests of unitholders; and

2. the instrument constituting the scheme so provides.

Sale and redemption

(1) In accordance with COLL 4.2.5R (Table: contents of the prospectus), the authorised fund manager must describe the arrangements for the sale and redemption of units in the prospectus.

(2) The authorised fund manager must, at all times during the dealing day, be willing to effect the sale of units in the authorised fund, in accordance with the conditions in the instrument constituting the scheme and the prospectus unless:

(a) it has reasonable grounds to refuse such sale; or
(b) the issue of units is prevented under COLL 6.2.18 R (Limited issue).

(3) Subject to COLL 6.2.19 R (Limited redemption) and
COLL 6.2.21 R (Deferred redemption), the authorised fund manager must, at all times during the dealing day, on request of any qualifying unitholder, effect the redemption of units in accordance with the conditions in the instrument constituting the scheme and the prospectus unless it has reasonable grounds to refuse such redemption.

(4) On agreeing to a redemption of units in (3), the authorised fund manager must pay the unitholder the appropriate proceeds of redemption within the period specified in (5) unless the authorised fund manager has reasonable grounds for withholding all or any part of the proceeds.

(5) Except where (5A) applies the period in (4) expires at the close of business on the fourth business day following the later of:

(a) the valuation point at which the price for the redemption was determined; or

(b) the time when the authorised fund manager has all the duly executed instruments and authorisations to effect (or enable the authorised fund manager to effect) the transfer of title to the units.

(5A) Where a non-UCITS retail scheme operating as a FAIF operates limited redemption arrangements, the period in (4) expires no later than the expiry of a period of 185 days from the date of receipt and acceptance of the instruction to redeem.

(6) Except where (7) applies, and subject to COLL 6.2.21 R (Deferred redemption), the authorised fund manager must sell or redeem units at a price determined no later than the end of the business day immediately following the receipt and acceptance of an instruction to do so, or at the next valuation point for the purposes of dealing in units if later (or, for a sale or redemption at a historic price, at the price determined at the last valuation point).

(7) Where the authorised fund operates limited redemption arrangements, the authorised fund manager must sell or redeem units at a price determined no later than the expiry of a period of 185 days from the date of the receipt and acceptance of the instruction to sell or redeem.

(8) [deleted]
(10) Paragraphs (4), (5) and COLL 6.3.5AR (2) (Sale and redemption prices for single-priced authorised funds) do not apply where the authorised fund manager is buying units as principal on an investment exchange (for an AUT in accordance with a power in the trust deed) and settlement will be made in accordance with the rules of that exchange.

**Sale and redemption: guidance**

(1) The prospectus of an authorised fund that does not operate on the basis of historic prices may allow the authorised fund manager to identify a point in time in advance of a valuation point (a cut-off point) after which it will not accept instructions to sell or redeem units at that valuation point. In order to protect customers’ interests, the cut-off point should be no earlier than the close of business on the business day before the valuation point it relates to. If there is more than one valuation point in a day the cut-off should not be before any previous valuation point.

(2) Where the authorised fund operates limited redemption arrangements, the cut-off point may reflect the expected length of time required to undertake transactions in the underlying investments provided the 185 day limit in COLL 6.2.16 R (7) (Sale and redemption) is complied with.

(3) Where (1) applies, different cut-off points may be used to differentiate between the methods of submitting instructions to sell or redeem to the authorised fund manager but not to differentiate between unitholders or potential unitholders.

(4) CESR’s guidelines on a common definition of European money market funds recommend that, for a UCITS scheme which is a short-term money market fund or a money market fund, the settlement period in COLL 6.2.16 R (5) should expire at the close of business on the third business day.

[Note: paragraph 14 of CESR’s guidelines on a common definition of European money market funds]

**Limited issue**

(1) If an authorised fund limits the issue of any class of unit, the prospectus of an authorised fund must provide for the circumstances and conditions when units will be issued.

(2) Where (1) applies, the authorised fund manager may not provide for the further issue of units unless, at the time of the issue, it is satisfied on reasonable grounds that the proceeds of that subsequent issue can be invested without compromising the scheme’s investment objective or materially prejudicing existing unitholders.

(3) Within a scheme, unit classes may operate different arrangements for the issue of units provided there is no prejudice to the interests of any unitholder.
**Limited redemption**

(1) The *instrument constituting the scheme* and the *prospectus* of a non-UCITS retail scheme operating as a FAIF, or that invests substantially in immovables or whose investment objective is to provide a specified level of return, may provide for *limited redemption arrangements* appropriate to its aims and objectives.

(2) Where (1) applies, the *scheme* must provide for *sales* and *redemptions* at least once in every six months.

(3) Within a *scheme*, *unit classes* may operate different arrangements for *sales* and *redemptions of units* provided there is no prejudice to the interests of any *unitholder*.

(4) The *scheme* may provide for *sales of units* of any *class* to be executed at a greater frequency than *redemptions of units* of the same *class*.

**Limited redemption: guidance**

The conditions for *limited redemption arrangements* in COLL 6.2.19 R should be considered, for AUTs as well as for ICVCs, in conjunction with PERG 9 (Meaning of an open-ended investment company) and PERG 9.8 (The investment condition: the 'expectation test' (section 236(3)(a) of the Act)).

**Deferred redemption**

(1) Subject to (1A) and (3) the *instrument constituting the scheme* and the *prospectus* of an *authorised fund* which has at least one *valuation point* on each *business day*, may permit deferral of *redemptions at a valuation point* to the next *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund’s value*.

(1A) Subject to (3) the *instrument constituting the scheme* and the *prospectus* of a non-UCITS retail scheme operating as a FAIF may permit deferral of *redemptions at a valuation point* to a following *valuation point* where the requested *redemptions* exceed 10%, or some other reasonable proportion disclosed in the *prospectus*, of the *authorised fund’s value*.

(2) Any deferral of *redemptions* under (1) or (1A) must be undertaken in accordance with the procedures explained in the *prospectus* which must ensure:

(a) the consistent treatment of all *unitholders* who have sought to *redeem units* at any *valuation point* at which *redemptions* are deferred; and
(b) that all deals relating to an earlier valuation point are completed before those relating to a later valuation point are considered.

(3) Any deferral under (1A) is subject to the limitations on payments to unitholders in COLL 6.2.16 R (5A).

Deferred redemption: guidance

In times of high levels of redemption, deferred redemption will enable the authorised fund manager to protect the interests of continuing unitholders by allowing it to match the sale of scheme property to the level of redemptions. This should reduce the impact of dilution on the scheme.

Property Authorised Investment Funds

(1) The authorised fund manager of a property authorised investment fund must take reasonable steps to ensure that no body corporate holds more than 10% of the net asset value of that fund (the "maximum allowable").

(2) Where the authorised fund manager of a property authorised investment fund becomes aware that a body corporate holds more than the maximum allowable, he must:

(a) notify the body corporate of that event;

(b) not pay any income distribution to the body corporate; and

(c) redeem or cancel the body corporate's holding down to the maximum allowable within a reasonable time-frame.

(3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the authorised fund manager reasonably considers to be appropriate having regard to the interests of the unitholders as a whole.

Reasonable steps to monitor the maximum allowable include:

(1) regularly reviewing the register; and

(2) taking reasonable steps to ensure that unitholders are kept informed of the requirement that no body corporate may hold more than 10% of the net asset value of a property authorised investment fund.
6.3 Valuation and pricing

Application

(1) This section applies to an authorised fund manager, a depositary, an ICVC and any other director of an ICVC.

(2) COLL 6.3.3A R to COLL 6.3.3D R (Accounting procedures):

(a) apply to:

   (i) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services; and

   (ii) an EEA UCITS management company providing collective portfolio management services for a UCITS scheme from a branch in the United Kingdom;

   in addition to applying in accordance with (1); but

(b) do not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

Purpose

(1) In accordance with Principle 6, this section is intended to ensure that the authorised fund manager pays due regard to its clients’ interests and treats them fairly.

(2) An authorised fund manager is responsible for valuing the scheme property of the authorised fund it manages and for calculating the price of units in the authorised fund. This section protects clients by:

   (a) setting out rules and guidance to ensure the prices of units in both a single-priced authorised fund and a dual-priced authorised fund are calculated fairly and regularly;

   (b) allowing for the authorised fund manager to mitigate the effects of any dilution (reduction) in the value of the scheme property caused by:
(i) payment of stamp duty reserve tax (SDRT) in relation to certain unit transactions; and
(ii) buying and selling underlying investments as a result of the issue or cancellation of units;
(c) making appropriate provision to ensure clients are treated fairly where units are being dealt in at a known (historic) price; and
(d) ensuring that prices are made public in an appropriate manner.

(3) The requirements in this section are to be applied separately to each sub-fund of a scheme which is an umbrella, and, if appropriate, the currency of a sub-fund may be used instead of the base currency of the umbrella. Consequently different methods of pricing units may be applied by an authorised fund manager to different sub-funds of an umbrella.

(4) The authorised fund manager must follow the same method of pricing for each class of units in an authorised fund, or in a sub-fund of an umbrella.

### Valuation

(1) To determine the price of units the authorised fund manager must carry out a fair and accurate valuation of all the scheme property in accordance with the instrument constituting the scheme and the prospectus.

(2) For a dual-priced authorised fund, each valuation of the scheme property must consist of two parts, carried out on an issue basis and a cancellation basis respectively.

### Accounting procedures

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the employment of the accounting policies and procedures referred to in SYSC 4.1.9 R (Accounting policies), so as to ensure the protection of unitholders.

(2) Accounting for the scheme shall be carried out in such a way that all assets and liabilities of the scheme can be directly identified at all times.

(3) If the scheme is an umbrella, separate accounts must be maintained for each sub-fund.

[Note: article 8(1) of the UCITS implementing Directive]

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS Home State, so as to ensure that the calculation of the net asset value of each scheme it manages
is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

[Note: article 8(2) of the UCITS implementing Directive]

6.3.3C

1. The accounting policies and procedures referred to in COLL 6.3.3B R should enable the authorised fund manager of a UCITS scheme to value the scheme property accurately at each valuation point and to calculate dealing prices by reference to that valuation.

2. Where different share or unit classes exist, it should be possible to extract from the accounting records the net asset value of each different class.

[Note: recital (9) of the UCITS implementing Directive]

6.3.3D

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of each scheme it manages.

[Note: article 8(3) of the UCITS implementing Directive]

Valuation points

6.3.4

1. An authorised fund must not have fewer than two regular valuation points in any month and if there are only two valuation points in any month, the regular valuation points must be at least two weeks apart.

2. The prospectus of a scheme must contain information about its regular valuation points for the purposes of dealing in units in accordance with COLL 4.2.5R (16) (Table: contents of the prospectus).

3. Where a scheme operates limited redemption arrangements, (1) does not apply and the valuation points must be stated in the prospectus but must not be set more than six months apart.

4. Where a scheme operates limited redemption arrangements, it must be valued and prices published in the manner set out in COLL 6.3.11 R (Publication of prices) at least once in every month.

5. In (4), a valuation point for the purpose of publishing prices only, does not make it a valuation point for the purpose of (2) unless it is disclosed as such in the prospectus.

6. Higher volatility funds must have at least one valuation point every business day except where the scheme is a non-UCITS retail scheme operating as a FAIF.
(6A) Qualifying money market funds must have at least one valuation point every business day at which the valuation is carried out on an amortised cost basis.

(6B) UCITS schemes operating as short-term money market funds must have at least one valuation point every business day at which the valuation is carried out on an amortised cost or mark to market basis.

(6C) Non-UCITS retail schemes operating as short-term money market funds must have at least one valuation point every business day or, where the scheme is marketed solely through employee savings schemes or to a specific category of investors that is subject to redemption restrictions, at least one every week at which the valuation is carried out on an amortised cost or mark to market basis.

(6D) Money market funds must value with the appropriate frequency as required in (6B) or (6C) on a mark to market basis.

(7) No valuation points are required during the period of any initial offer.

(8) The authorised fund manager may determine to have an additional valuation point for an authorised fund as a result of market movement under COLL 6.3.9 (Forward and historic pricing) or otherwise, in which case it must inform the depositary.

### Price of a unit

(1) An authorised fund manager must ensure that the price of a unit of any class is calculated:

   (a) by reference to the net value of the scheme property; and

   (b) in accordance with the provisions of both the instrument constituting the scheme and the prospectus.

(2) Any unit price calculated in accordance with (1) must be expressed in a form that is accurate to at least four significant figures.

(3) For each class of units in a single-priced authorised fund, a single price must be calculated at which units are to be issued and cancelled.
The authorised fund manager of a single-priced authorised fund must not:

1. sell a unit for more than the price of a unit of the relevant class at the relevant valuation point, to which may be added any preliminary charge permitted and any payments required under COLL 6.3.7 R and COLL 6.3.8 R; or

2. redeem a unit for less than the price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted and any deductions under COLL 6.3.7 R and COLL 6.3.8 R.

The authorised fund manager of a dual-priced authorised fund must not:

1. sell a unit for more than the maximum sale price of a unit of the relevant class at the relevant valuation point, to which may be added any payment required under COLL 6.3.7 R; or

2. redeem a unit for less than the cancellation price of a unit of the relevant class at the relevant valuation point, less any redemption charge permitted and any deduction under COLL 6.3.7 R.

The maximum sale price of units under (1)(a) is the total of:

1. the issue price; and

2. the current preliminary charge.

The sale price of units under (1)(a) must not be less than the relevant redemption price under (1)(b).

The redemption price under (1)(b) must not exceed the relevant issue price of the relevant units.

Subject to COLL 6.7.9 R (Charges for the exchange of units in an umbrella), in the case of an umbrella:

1. the maximum price at which units in one sub-fund that is a dual-priced authorised fund may be acquired in exchange for units in another sub-fund must not exceed the relevant maximum sale price (less any preliminary charge) of the new units; and
The prospectus may make provision for large deals to be carried out at a higher sale price or a lower redemption price than those published, provided they do not exceed the relevant maximum and minimum parameters.

6.3.5C

FCA

Valuation and pricing guidance

Table: This table belongs to COLL 6.3.2 G (2) (a) and COLL 6.3.3 R (Valuation).

Valuation and pricing

<table>
<thead>
<tr>
<th>1</th>
<th>The valuation of scheme property</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>Where possible, investments should be valued using a reputable source. The reliability of the source of prices should be kept under regular review.</td>
</tr>
<tr>
<td>(2)</td>
<td>For some or all of the investments comprising the scheme property, different prices may quoted according to whether they are being bought (offer prices) or sold (bid prices). The valuation of a single-priced authorised fund should reflect the mid-market value of such investments. In the case of a dual-priced authorised fund, the issue basis of the valuation will be carried out by reference to the offer prices of investments and the cancellation basis by reference to the bid prices of those same investments. The prospectus should explain how investments will be valued for which a single price is quoted for both buying and selling.</td>
</tr>
<tr>
<td>(2A)</td>
<td>Schemes investing in approved money-market instruments should value such instruments on an amortised cost basis on condition that:</td>
</tr>
<tr>
<td>(a)</td>
<td>the approved money-market instrument has a residual maturity of less than three months and has no specific sensitivity to market parameters, including credit risk; or</td>
</tr>
<tr>
<td>(b)</td>
<td>the scheme is a qualifying money market fund.</td>
</tr>
</tbody>
</table>

[Note: CESR's UCITS eligible assets guidelines with respect to article 4(2) of the UCITS eligible assets Directive]

| (2B) | Short-term money market funds may value approved money-market instruments on an amortised cost basis. |

[Note: paragraph 21 of CESR's guidelines on a common definition of European money market funds]

| (3) | Any part of the scheme property of an authorised fund that is not an investment should be valued at a fair value, but for immovables this is subject to COLL 5.6.20 R (3)(f) (Standing independent valuer and valuation). |
| (4) | For the purposes of (2) and (3), any fiscal charges, commissions, professional fees or other charges that were paid, or would be payable on acquiring or disposing of the investment or other part of the scheme property should , in the case of a single-priced authorised fund, be excluded from the value of an investment or other part of the scheme property. In the case of a dual-priced authorised fund, any such payments should be added to the issue basis of the valuation, or subtracted from the cancellation basis of the valuation, as appropriate. Alternatively, the prospectus of a dual-priced authorised fund may prescribe any other method of calculating unit prices that ensures an equivalent treatment of the effect of these payments. |
Where the authorised fund manager has reasonable grounds to believe that:

(a) no reliable price exists for a security at a valuation point; or
(b) the most recent price available does not reflect the authorised fund manager’s best estimate of the value of a security at the valuation point

it should value an investment at a price which, in its opinion, reflects a fair and reasonable price for that investment (the fair value price);

The circumstances which may give rise to a fair value price being used include:

(a) no recent trade in the security concerned; or
(b) the occurrence of a significant event since the most recent closure of the market where the price of the security is taken.

In (b), a significant event is one that means the most recent price of a security or a basket of securities is materially different to the price that it is reasonably believed would exist at the valuation point had the relevant market been open.

In determining whether to use such a fair value price, the authorised fund manager should include in his consideration:

(a) the type of authorised fund concerned;
(b) the securities involved;
(c) the basis and reliability of the alternative price used; and
(d) the authorised fund manager’s policy on the valuation of scheme property as disclosed in the prospectus.

Where the authorised fund manager, the depositary or the standing independent valuer have reasonable grounds to believe that the most recent valuation of an immovable does not reflect the current value of that immovable, the authorised fund manager should consult and agree with the standing independent valuer a fair and reasonable value for the immovable.

The authorised fund manager should document the basis of valuation (including any fair value pricing policy) and, where appropriate, the basis of any methodology and ensure that the procedures are applied consistently and fairly.

Where a unit price is determined using properly applied fair value prices in accordance with policies in (8), subsequent information that indicates the price should have been different from that calculated will not normally give rise to an instance of incorrect pricing.

2 The pricing controls of the authorised fund manager

An authorised fund manager needs to be able to demonstrate that it has effective controls over its calculations of unit prices.

The controls referred to in (1) should ensure that:

(a) asset prices are accurate and up to date;
(b) investment transactions are accurately and promptly reflected in valuations;
(c) the components of the valuation (including stock, cash, and units in issue), are regularly reconciled to their source or prime records and any reconciling items resolved promptly and debtors reviewed for recoverability;
(d) the sources of prices not obtained from the main pricing source are recorded and regularly reviewed;
(e) compliance with the investment and borrowing powers is regularly reviewed;
(f) dividends are accounted for as soon as securities are quoted ex-dividend (unless it is prudent to account for them on receipt);
(g) fixed interest dividends, interest and expenses are accrued at each valuation point;
(h) tax positions are regularly reviewed and adjusted, if necessary;
(i) reasonable tolerances are set for movements in the key elements of a valuation and movements outside these tolerances are investigated;
(j) the fund manager regularly reviews the portfolio valuation for accuracy; and
(k) the valuation of OTC derivatives is accurate and up to date and in compliance with the methods agreed with the depositary.

(3) In exercising its pricing controls, the authorised fund manager may exercise reasonable discretion in determining the appropriate frequency of the operation of the controls and may choose a longer interval, if appropriate, given the level of activity on the authorised fund or the materiality of any effect on the price.

(4) Evidence of the exercise of the pricing controls should be retained.

(5) Evidence of persistent or repetitive errors in relation to these matters, and in particular any evidence of a pattern of errors working in an authorised fund manager’s favour, will make demonstrating effective controls more difficult.

(6) Where the pricing function is delegated to a third party, COLL 6.6.15 R (1) (Committees and delegation) will apply.

3 The depositary’s review of the authorised fund manager’s systems and controls

(1) This section provides details of the types of checks a depositary should carry out to be satisfied that the authorised fund manager adopts systems and controls which are appropriate to ensure that prices of units are calculated in accordance with this section and to ensure that the likelihood of incorrect prices will be minimised. These checks also apply where an authorised fund manager has delegated all or some of its pricing functions to one or more third parties.

(2) A depositary should thoroughly review an authorised fund manager’s systems and controls to confirm that they are satisfactory. The depositary’s review should include an analysis of the controls in place to determine the extent to which reliance can be placed on them.

(3) A review should be performed when the depositary is appointed and thereafter as it feels appropriate given its knowledge of the robustness and the stability of the systems and controls and their operation.

(4) A review should be carried out more frequently where a depositary knows or suspects that an authorised fund manager’s systems and controls are weak or are otherwise unsatisfactory.

(5) Additionally, a depositary should from time to time review other aspects of the valuation of the scheme property of each authorised fund for which it is responsible, verifying, on a sample basis, if necessary, the assets, liabilities, accruals, units in issue, securities prices (and in particular the prices of OTC derivatives, unapproved securities and the basis for the valuation of unquoted securities) and any other relevant matters, for example an accumulation factor or a currency conversion factor.

(6) A depositary should ensure that any issues, which are identified in any such review, are properly followed up and resolved.

4 The recording and reporting of instances of incorrect pricing
An *authorised fund manager* should record each instance where the *price of a unit* is incorrect as soon as the error is discovered, and report the fact to the *depositary* together with details of the action taken, or to be taken, to avoid repetition as soon as practicable.

In accordance with COLL 6.6.11 G (Duty to inform the FCA), the *depositary* should report any breach of the rules in COLL 6.3 immediately to the FCA. However, notification should relate to instances which the depositary considers material only.

A *depositary* should also report to the FCA immediately any instance of incorrect pricing where the error is 0.5% or more of the *price of a unit*, where a depositary believes that reimbursement or payment is inappropriate and should not be paid by an *authorised fund manager*.

In accordance with SUP 16.6.8 R, a *depositary* should also make a return to the FCA on a quarterly basis which summarises the number of instances of incorrect pricing during a particular period.

### 5 The rectification of pricing breaches

1. COLL 6.6.3 R (1) (Functions of the authorised fund manager) places a duty on the *authorised fund manager* to take action to reimburse affected *unitholders*, former *unitholders*, and the scheme itself, for instances of incorrect pricing, except if it appears to the depositary that the breach is of minimal significance.

2. A *depositary* may consider that the instance of incorrect pricing is of minimal significance if:
   a. the *authorised fund manager* and *depositary* meet the standards of control set out in Section 2 and Section 3 of this Table; and
   b. the error in pricing of a *unit* is less than 0.5% of the correct *price*.

3. In determining (2), if the instance of incorrect pricing is due to one or more factors or exists over a period of time, each *price* should be considered separately.

4. If a *depositary* deems it appropriate, it may, in spite of the circumstances outlined in (2), require a payment from the *authorised fund manager* or from the *authorised fund* to the *unitholders*, former *unitholders*, the *authorised fund* or the *authorised fund manager* (where appropriate).

5. The *depositary* should satisfy itself that any payments required following an instance of incorrect pricing are accurately and promptly calculated and paid.

6. If a *depositary* considers that reimbursement or payment is inappropriate, it should report the matter to the FCA, together with its recommendation and justification. The *depositary* should take into account the need to avoid prejudice to the rights of *unitholders*, or the rights of *unitholders* in a class of *units*.

7. It may not be practicable, or in some cases legally permissible, for the *authorised fund manager* to obtain reimbursement from *unitholders*, where the *unitholders* have benefited from the incorrect *price*.

8. In all cases where reimbursement or payment is required, amounts due to be reimbursed to *unitholders* for individual sums which are reasonably considered by the *authorised fund manager* and *depositary* to be immaterial, need not normally be paid.
6.3.7 SDRT Provision

(1) The authorised fund manager may, in accordance with the prospectus, require the payment of an SDRT provision for the issue or sale of units or any class of units or the deduction of an SDRT provision for the redemption or cancellation of units or any class of units.

(2) Any such payment or deduction becomes due at the same time as payment or transfer of property becomes due for the issue, sale, redemption or cancellation.

(3) Any payment referred to in (1) must be paid to the depositary to become part of scheme property as soon as practicable after receipt.

(4) As soon as practicable after each valuation point, the authorised fund manager must notify the depositary of the transactions, or types of transactions for which an SDRT provision is applied and the amounts or rates of those SDRT provisions.

6.3.8 Dilution

(1) When arranging to sell, redeem, issue or cancel units, or when units are issued or cancelled under COLL 6.2.7 R (1) (Issues and cancellations through an authorised fund manager), an authorised fund manager is permitted to:

   (a) require the payment of a dilution levy; or
   (b) make a dilution adjustment; or
   (c) neither require a dilution levy nor make a dilution adjustment;

in accordance with its statements in the prospectus required by COLL 4.2.5R (18) (Table: contents of the prospectus).

(2) An authorised fund manager operating either a dilution levy or a dilution adjustment, must operate that measure in a fair manner to reduce dilution and solely for that purpose.

(3) A dilution levy becomes due at the same time as payment or transfer of property becomes due for the issue, sale, redemption or cancellation and any such payment in respect of a dilution levy must be paid to the depositary to become part of scheme property as soon as practicable after receipt.

(4) A dilution adjustment may be made as part of the calculation of the unit price for the purpose of reducing dilution in the scheme or to recover any amount which it had already paid or reasonably expects to pay in the future in relation to the issue or cancellation of units.
(5) Where the **authorised fund manager** decides to make or not to make a **dilution adjustment**, it must not do so for the purpose of creating a profit or avoiding a loss for the account of an **affected person**.

(6) As soon as practicable after a **valuation point**, the **authorised fund manager** must provide the **depositary** with the amount or rate of any **dilution adjustment** made to the **price** or any **dilution levy** applied.

### Forward and historic pricing

| (1) | For the sale and redemption of units, the **authorised fund manager** must, in accordance with the **prospectus** of an **authorised fund**, operate on the basis of **forward price** only or **historic prices**. |
| (2) | If **forward prices** only are to be used, all **deals** must be at a **forward price**. |
| (3) | **Forward prices** for the sale and redemption of units must be used: |
| | (a) for a **higher volatility fund**; |
| | (b) where the regular **valuation points** are more than one **business day** apart; |
| | (c) if the request to deal reaches the **authorised fund manager** through the post or by any similar form of non-interactive communication; |
| | (d) for an **issue** or **cancellation** under **COLL 6.2.7** (Issue and cancellation of units through an authorised fund manager); |
| | (e) if the applicant for the **sale** or **redemption** so requests; or |
| | (f) where the **authorised fund manager** has reason to believe at any time that the **price** that would reflect the current value of the scheme property would vary by more than 2% from the last calculated **price**, unless the **authorised fund manager** has decided to carry out an additional valuation. |

(4) If an **authorised fund manager** operates **historic prices**, the **prospectus** must detail the circumstances under which **deals** in the **authorised fund**, individually or otherwise, will nevertheless be carried out on a **forward price** basis or when the **authorised fund** will elect to move to **forward prices** or declare an additional **valuation point**.

(5) Where the **authorised fund** elects to move to **forward prices** temporarily in accordance with (4), such election will only apply until the next **valuation point**.
(6) All sub-funds of a scheme which is an umbrella must adopt the same pricing basis, but this does not apply merely because of a requirement to price on a forward price basis temporarily under this rule.

Historic pricing: guidance
The authorised fund manager should advise the depositary of the date and time of any decision to use forward prices.

Publication of prices
Where the authorised fund manager is prepared to deal in units, or is willing to issue or cancel units, under COLL 6.2.7, it must make the dealing prices public in an appropriate manner.

Manner of price publication
(1) In determining the appropriate manner of making prices public, the authorised fund manager should ensure that:
   (a) a unitholder or potential unitholder can obtain the prices at a reasonable cost;
   (b) prices are available at reasonable times;
   (c) publication is consistent with the manner and frequency at which the units are dealt in;
   (d) the manner of publication is disclosed in the prospectus; and
   (e) prices are published in a consistent manner.

(2) Examples of what might be deemed appropriate include:
   (a) publication in a national newspaper;
   (b) supply through an advertised local rate or freephone telephone number;
   (c) publication on the internet;
   (d) inclusion in a database of prices which is publicly available; or
   (e) communication to all existing unitholders.

(3) The authorised fund manager should make previous prices available to any unitholder or potential unitholder.
Maintaining the value of a qualifying money market fund or a short-term money market fund

The authorised fund manager of a qualifying money market fund or a short-term money market fund valuing scheme property on an amortised cost basis must:

(1) carry out a valuation of the scheme property on a mark to market basis at least once every week and at the same valuation point used to value the scheme property on an amortised cost basis; and

(2) ensure that the value of the scheme property when valued on a mark to market basis does not differ by more than 0.5% from the value of the scheme property when valued on an amortised cost basis.

The authorised fund manager should advise the depositary when the mark to market value of a qualifying money market fund or a short-term money market fund valuing scheme property on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The authorised fund manager of a qualifying money market fund or short-term money market fund should agree procedures with the depositary designed to stabilise the value of the scheme in these events.
6.4 Title and registers

Application

(1) This section applies to a manager and a trustee of an AUT.

(2) COLL 6.4.9 (Plan registers) also applies to the ACD, any other director and the depositary of an ICVC.

Purpose

The aim of this section is to protect consumers, by setting out the requirements for a register of unitholders for an AUT and for a plan register for an authorised fund, so a proper record of ownership of units is maintained, whether held directly or indirectly through a group plan.

Explanation of this section

(1) This section deals with matters relating to the register of unitholders of units in an AUT including its establishment and contents. The manager or trustee may be responsible for the register. In any event, the person responsible for the register must be stated in the trust deed and this section details what his duties are. The provisions relating to documents evidencing title to units, including the issue of bearer certificates are dependent on the provisions in the trust deed and their operation should be set out in the prospectus.

(2) For an ICVC, requirements as to the register of holders and transfer of units are contained in Schedule 3 of the OEIC Regulations (Register of shareholders).

(3) COLL 6.4.9 makes provision to ensure that if the cost of the plan register is borne by the scheme, plan investors have the same rights in respect of notice and disclosure as unitholders on the main register.

Register: general requirements and contents

(1) Either the manager or the trustee (as nominated in the trust deed) must establish and maintain a register of unitholders as a document in accordance with this section.

(2) The manager or trustee in accordance with their duties under (1) must exercise all due diligence and take all reasonable steps to ensure the information contained on the register is at all times complete and up to date.
(3) The register must contain:

(a) the name and address of each unitholder (for joint unitholders, no more than four need to be registered) other than units represented by bearer certificates;

(b) the number of units of each class held by each unitholder (other than units represented by bearer certificates);

(c) the date on which the unitholder was registered for units standing in his name (other than units represented by bearer certificates); and

(d) the number of units of each class currently in issue, including bearer certificates and the number of units of those bearer certificates.

(4) No notice of any trust, express, implied or constructive which may be entered in the register is binding on the manager or trustee, but this does not affect their obligations under COLL 6.4.9 R (1) (Plan registers).

(5) The register is conclusive evidence of the persons entitled to the units entered in it.

(6) The person responsible for the register in (1) must:

(a) take reasonable steps to alter the register on receiving written notice of a change of name or address of any unitholder;

(b) in relation to a change of name in (a) where a certificate has been issued, either endorse the existing certificate or issue a new one;

(c) make the register available for inspection free of charge in the United Kingdom by or on behalf of any unitholder (including the manager), during office hours, but it may be closed for periods not exceeding 30 business days in any one year;

(d) supply free of charge to any unitholder or his authorised representative a copy of the entries on the register relating to that unitholder on request;

(e) where a unitholder defaults on paying for the issue or sale of units, make an alteration or deletion in the register to compensate for the default after which the manager becomes entitled to those units (until those units are either cancelled or re-sold and paid for); and

(f) carry out any conversion of units allowed for by COLL 6.4.8 R (Conversion of units) after consultation with the manager or trustee, as appropriate.
The manager as unitholder

6.4.5 FCA

(1) If no person is entered in the register as the unitholder of a unit, the manager must be treated as the unitholder of each such unit which is in issue (other than a unit which is represented by a bearer certificate).

(2) Where units are transferred to the manager, they need not be cancelled and the manager need not be entered on the register as the new unitholder.

Transfer of units by act of parties

6.4.6 FCA

(1) Every unitholder is entitled to transfer units held on the register by an instrument of transfer in any form that the person responsible for the register may approve, but that person is under no duty to accept a transfer unless:

(a) it is permitted by the trust deed or prospectus; and

(b) the transfer is excluded by Schedule 19 of the Finance Act 1999 from a charge to stamp duty reserve tax, or there has been paid to the trustee, for the account of the AUT, an amount agreed between the trustee and the manager not exceeding the amount that would be derived by applying the rate of stamp duty reserve tax to the market value of the units being transferred.

(2) Every instrument of transfer of units must be signed by, or on behalf of, the unitholder transferring the units (or, for a body corporate, sealed by that body corporate or signed by one of its officers (or in Scotland, two of its officers)) authorised to sign it and, unless the transferee is the manager, the transferor must be treated as the unitholder until the name of the transferee has been entered in the register.

(3) Every instrument of transfer (stamped as necessary) must be left for registration, with the person responsible for the register, accompanied by:

(a) any necessary documents that may be required by legislation; and

(b) any other evidence reasonably required by the person responsible for the register.

(4) The details of instruments of transfer must be kept for a period of six years from the date of its registration.

(5) On registration of an instrument of transfer, a record of the transferor and the transferee and the date of transfer must be made on the register.
Certificates (including bearer certificates)

(1) Following the sale of units or as a result of COLL 6.4.6 R (Transfer of units by act of parties) a document recording title to those units may be issued in such a form as the trust deed permits.

(2) The person responsible for the register must issue any document in (1) or provide relevant information in a timely manner where the procedures for redeeming units require the unitholder to surrender that document.

(3) Bearer certificates may only be issued if they are permitted by the instrument constituting the scheme.

Conversion of units

Where there is more than one class of units offered for issue or sale, the unitholder has a right to convert from one to the other, provided that doing so would not contravene any provision in the prospectus.

Plan registers

(1) The ACD and any other directors of an ICVC or the person responsible for the register of an AUT may arrange for a plan register to be established and maintained.

(2) Where payments are made out of scheme property to establish and maintain a plan register, plan investors must be treated as unitholders for the purposes of COLL 4.3 to COLL 4.5 and COLL 6.4.4 R (Register: general requirements and contents).
6.5 Appointment and replacement of the authorised fund manager and the depositary

Application

This section applies in accordance with COLL 6.5.2 R (Table of application).

Table of application

This table belongs to COLL 6.5.1 R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Any other director of an ICVC</th>
<th>Depositary of an ICVC</th>
<th>Manager of an AUT</th>
<th>Trustee of an AUT</th>
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<td>6.5.1R</td>
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Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

Appointment of an ACD

(1) The directors (or director) of an ICVC must take all practicable steps to ensure the ICVC has at all times as its ACD a person who is qualified to act as ACD.

(2) If the ICVC ceases to have any director, the depositary must exercise its powers, under the OEIC Regulations, to appoint a person to be an ACD of the ICVC.
(3) For an ICVC that holds annual general meetings under the OEIC Regulations, the appointment of an ACD (other than the first ACD), under (1) or (2), must terminate at the close of the next annual general meeting following the date of the appointment or (if later) upon the expiration of 12 months from the date the appointment takes effect, unless the appointment has been approved by a resolution of the unitholders before the close of that annual general meeting or expiration of that 12 month period (as the case may be).

(4) An ACD must not voluntarily terminate its appointment as ACD unless the termination is effective at the same time as the commencement of the appointment of a successor ACD.

(5) (a) In the event of:
   (i) any person becoming or ceasing to be a director;
   (ii) the appointment of an ACD being terminated;
   (iii) a new ACD being appointed; or
   (iv) a corporate director (including the ACD) becoming aware of any change of its controller;
   
   the FCA must immediately be notified in accordance with (b).

   (b) In the case of:
   (i) (a)(i), by the ACD;
   (ii) (a)(ii), by the ACD whose appointment is being terminated;
   (iii) (a)(iii), by the new ACD; and
   (iv) (a)(iv), by the corporate director concerned.

Termination of appointment of an ACD

(1) The appointment of an ACD terminates immediately upon it ceasing to be a director.

(2) The appointment of an ACD terminates if a notice of termination of that appointment, the terms of which have been approved by a resolution of the board of directors of the ICVC, is given to the ACD.

(3) If there is no director other than the ACD, the appointment of the ACD terminates if a notice of termination of that appointment is given by the depositary to the ACD and to the ICVC, following any of the following events:
(a) the calling of a meeting to consider a resolution for winding up the ACD;

(b) an application being made to dissolve the ACD or to strike it off the Register of Companies;

(c) the presentation of a petition for the winding up of the ACD;

(d) the making of, or any proposals for the making of, a composition or arrangement with any one or more of the ACD's creditors;

(e) the appointment of a receiver to the ACD (whether an administrative receiver or a receiver appointed over particular property);

(f) anything equivalent to (a) to (e) above occurring in respect of the ACD in a jurisdiction outside the United Kingdom.

(4) Any termination under (2) or (3) takes effect when the notice is given, or on any subsequent time for its effect stated in the notice, or, if later, the time at which the termination is permitted to take effect under regulation 21 of the OEIC Regulations (The Authority's approval for certain changes in respect of a company).

(5) The depositary must (unless the termination takes effect at the same time as the appointment of a successor ACD) ensure that the unitholders are informed of the termination of the appointment of an ACD.

(6) The depositary is entitled to be reimbursed out of the scheme property for its out of pocket expenses in complying with (5).

Other directors

(1) Any directors of an ICVC other than the ACD must exercise reasonable care to ensure that the ACD undertakes the responsibilities allocated under ■ COLL 6.6.3 R (1) (Functions of the authorised fund manager) in a competent manner and the ACD must give those directors the information and explanations they consider necessary for this purpose.

(2) A director of an ICVC must not appoint an alternate director.

(3) When there is no person acting as ACD, the directors of an ICVC have the functions of an ACD under ■ COLL 6.6.15 R (Committees and delegation).

(4) When (3) applies, the directors must retain the services of one or more authorised persons to assist them in performing the functions referred to in ■ COLL 6.6.3 R (1) and ■ COLL 6.6.3 R (2).
ICVC without a director

If the ICVC ceases to have any directors, the depositary may:

1. retain the services of an authorised person to carry out the functions referred to in ■ COLL 6.6.3 R (3) (a) and ■ COLL 6.6.3 R (1) (b); or

2. manage the scheme property itself on behalf of the ICVC until a director is appointed or the winding up of the ICVC is commenced provided it is not prohibited from doing so by any law or rule.

Replacement of a manager

1. The manager of an AUT is subject to removal by written notice by the trustee upon any of the following events:
   - the calling of a meeting to consider a resolution for winding up the manager;
   - an application being made to dissolve the manager or to strike it off the Register of Companies;
   - the presentation of a petition for the winding up of the manager;
   - the making of, or any proposals for the making of, a composition or arrangement with any one or more of the manager's creditors;
   - the appointment of a receiver to the manager (whether an administrative receiver or a receiver appointed over particular property);
   - anything equivalent to (a) to (c) above occurring in respect of the manager in a jurisdiction outside the United Kingdom;
   - the trustee forming the reasonable opinion, and stating in writing, that a change of manager is desirable in the interest of unitholders;
   - a resolution of unitholders being passed to remove the manager; or
   - the unitholders of three quarters in value of all of the units then in issue (excluding units held or treated as held by the manager or by any associate of the manager) making a request in writing to the trustee that the manager should be removed.

2. On receipt of a notice by the trustee under (1), the manager of the AUT ceases to be the manager, and the trustee must by deed appoint another person eligible under the Act to be the manager.
of the AUT upon and subject to that other entering into such deed or deeds as the trustee may require.

(3) If the name of the AUT contains a reference to the name of the former manager, the former manager is entitled to require the new manager and the trustee immediately on receipt of a notice under (1) to propose a change in the name of the AUT.

Retirement of a manager of an AUT

(1) The manager of an AUT has the right to retire in favour of another person eligible under the Act and approved in writing by the trustee upon:

(a) the retiring manager appointing that person by deed as manager in its place and assigning to that person all its rights and duties as such a manager; and

(b) the new manager entering into such deeds as the trustee reasonably considers necessary or desirable to be entered into by that person in order to secure the due performance of its duties as the manager of the AUT.

(2) Upon retirement, the retiring manager:

(a) subject to (3), is released from all further obligations under the rules in this sourcebook and under the trust deed; and

(b) may retain any consideration paid to it in connection with the change without having to account for it to any unitholder.

(3) Sub-paragraph (2)(a) does not affect the rights of the trustee or any other person in respect of any act or omission on the part of the retiring manager before his retirement.

Consequences of removal or retirement of a manager of an AUT

(1) Upon the removal or retirement of the manager, the removed or retiring manager:

(a) is entitled to be recorded in the register for those units continued to be held or treated as held by it; and

(b) may require the trustee to issue to it a certificate for those units (if not previously issued).

(2) (Paragraph (1) is subject to any restriction in the prospectus relating to the permitted categories of unitholders.

Retirement of the depositary

(1) The depositary of an authorised fund may not retire voluntarily except upon the appointment of a new depositary.
(2) The depositary of an authorised fund must not retire voluntarily unless, before its retirement, it has ensured that the new depositary has been informed of any circumstance of which the retiring depositary has informed the FCA.

(3) When the depositary of an authorised fund wishes to retire or ceases to be an authorised person, the authorised fund manager may, subject to section 251 of the Act (Alteration of schemes and changes of manager or trustee) or regulation 21 of the OEIC Regulations (The Authority's approval for certain changes in respect of a company) appoint another person eligible to be the depositary in its place.
### Application

This section applies in accordance with COLL 6.6.2 R (Table of application).

### Table of application

This table belongs to COLL 6.6.1 R.

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<th>Depositary of an ICVC</th>
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Trustee of an AUT
Manager of an AUT
Depository of an ICVC
Any other directors of an ICVC

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Notes:
(1) "x" means "applies", but not every paragraph in every rule will necessarily apply.
(2) * COLL 6.6.15A R has a special application as set out in COLL 6.6.15AR (1).

Functions of the authorised fund manager

(1) The authorised fund manager must manage the scheme in accordance with:
   (a) the instrument constituting the scheme;
   (b) the rules in this sourcebook;
   (c) the most recently published prospectus; and
   (d) for an ICVC, the OEIC Regulations.

(2) The authorised fund manager must take such steps as necessary to ensure compliance with the rules in this sourcebook that impose obligations upon the ICVC.

(3) The authorised fund manager must:
   (a) make decisions as to the constituents of the scheme property in accordance with the investment objectives and policy of the scheme;
   (b) instruct the depositary in writing how rights attaching to the ownership of the scheme property are to be exercised, but not where COLL 6.6.13 R (2) (Exercise of rights in respect of the scheme property) applies; and
   (c) take action immediately to rectify any breach of COLL 6.3 and, where the breach relates to the incorrect pricing of units or to the late payment in respect of the issue of units, the rectification must, (unless the depositary otherwise directs under (4)), extend to the reimbursement or payment, or arranging the reimbursement or payment, of money:
      (i) by the authorised fund manager to unitholders and former unitholders;
(ii) by the ACD to the ICVC;
(iii) by the ICVC to the ACD;
(iv) by the manager to the trustee; or
(v) by the trustee (for the account of the AUT) to the manager.

(4) Rectification under (3)(c) need not, unless the depositary so directs, extend to any such reimbursement or payment where it appears to the depositary such breach, is of minimal significance.

General duties of the depositary

(1) The depositary of an authorised fund must take reasonable care to ensure that the scheme is managed by the authorised fund manager in accordance with:

(a) COLL 5 (Investment and borrowing powers);
(b) COLL 6.2 (Dealing);
(c) COLL 6.3 (Valuation and pricing);
(d) COLL 6.8 (Income: accounting, allocation and distribution); and

(e) any provision of the instrument constituting the scheme or prospectus that relates to the provisions referred to in (a) to (d).

(2) The depositary must, in so far as not required under (1)(c), take reasonable care to ensure on a continuing basis that:

(a) the authorised fund manager is adopting appropriate procedures to ensure that the price of a unit is calculated for each valuation point in accordance with COLL 6.3; and

(b) the authorised fund manager has maintained sufficient records to show compliance with COLL 6.3.

(3) The depositary, when acting in its capacity as depositary, must act solely in the interests of the unitholders.

(4) The depositary:

(a) must also take reasonable care to ensure that;

(i) the authorised fund manager considers whether or not to exercise the power provided by COLL 6.3.7 R (SDRT provision) or COLL 6.3.8 R (Dilution) (as the case may be) and, if applicable, the rate or amount of any SDRT provision, dilution levy or dilution adjustment that is imposed;
(ii) the authorised fund manager has in relation to (i), taken account of all factors that are material and relevant to the authorised fund manager's decision; and

(iii) when the authorised fund manager considers whether or not to exercise the power under COLL 6.3.8 R, the authorised fund manager has acted in accordance with the restrictions imposed by that rule; and

(b) has no duty in respect of the authorised fund manager's exercise of the discretion referred to in (a).

(5) The depositary of a UCITS scheme must ensure that in transactions involving the scheme property of a UCITS scheme, any consideration is remitted for the account of the scheme within the usual time limits.

(6) Where the UCITS scheme is being managed by an EEA UCITS management company, the depositary must enter into a written agreement with the management company regulating the flow of information deemed necessary to allow it to perform its functions in accordance with COLL 6.6.5 R.

(7) The agreement in (6):

(a) may cover more than one UCITS scheme; and

(b) must as a minimum contain the information set out in COLL 6 Annex 1.

[Note: articles 22(3)(a), (d) and (e), 23(5), 32(3) and 33(5) of the UCITS Directive and article 36 first sentence of the UCITS implementing Directive]

The requirements of SUP 2 (Information gathering by the FCA on its own initiative) apply to the depositary of a UCITS scheme, under which it must enable the FCA to obtain, on request, all information that the depositary has obtained while discharging its duties and that is necessary for the FCA to supervise the scheme's compliance with the requirements referred to in COLL 6.6.4 R (6).

[Note: articles 23(4) and 33(4) of the UCITS Directive]

Duties of the authorised fund manager and the depositary under the general law

(1) The duties and powers of the authorised fund manager, the directors of an ICVC and the depositary under the rules in this sourcebook and under the instrument constituting the scheme are in addition to the powers and duties under the general law.

(2) Paragraph (1) applies only in so far as the relevant general law is not qualified by the rules in this sourcebook or the instrument constituting the scheme or the OEIC Regulations.
Duties of the ACD of an ICVC: umbrella schemes

Where reasonable grounds exist for an ACD of an ICVC which is an umbrella to consider that a foreign law contract entered into by the ICVC may have become inconsistent with the principle of limited recourse stated in the instrument of incorporation of the ICVC (see COLL 3.2.6 R (22A) (ICVCs: Umbrella schemes - principle of limited recourse)) the ACD must:

1. promptly investigate whether there is an inconsistency; and
2. if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

In deciding what steps are appropriate to remedy the inconsistency, the ACD should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

1. where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or
2. causing the ICVC to exit the foreign law contract.

Maintenance of records

1. The authorised fund manager must make and retain for six years such records as enable:
   a. the scheme and the authorised fund manager to comply with the rules in this sourcebook and the OEIC Regulations; and
   b. it to demonstrate at any time that such compliance has been achieved.

2. The authorised fund manager must make and retain for six years a daily record of the units in the scheme held, acquired or disposed of by the authorised fund manager, including the classes of such units, and of the balance of any acquisitions and disposals.

3. Where relevant, an authorised fund manager must make and retain for a period of six years a daily record of:
   a. how it calculates and estimates dilution; and
   b. its policy and method for determining the amount of any dilution levy or dilution adjustment.

4. The authorised fund manager must on the request of the depositary immediately supply it with such information concerning the management and administration of the authorised fund as the depositary may reasonably require.
(1) This section applies to:

(a) an authorised fund manager of a UCITS scheme, a depositary, an ICVC and any other director of an ICVC which is a UCITS scheme; and

(b) subject to (2), a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme under the freedom to provide cross border services.

(2) COLL 6.6A.6 R ((Strategies for the exercise of voting rights) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State, as well as applying in accordance with (1).

(3) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

Maintenance of capital: notification

The ACD must immediately notify the FCA in writing if the ICVC’s capital falls below the minimum or exceeds the maximum stated in the instrument of incorporation.

Auditor: AUTs

(1) The manager of an AUT must, upon any vacancy for the position of auditor for an AUT, with the approval of the trustee, appoint as auditor for the AUT a person qualified for appointment as auditor of an authorised person.

(2) The audit fees of the auditor are determined by the manager with the approval of the trustee.

(3) The manager of an AUT may, with the approval of the trustee, at any time, remove the auditor of an AUT; this power exists notwithstanding anything in any agreement between the persons concerned.

Returns: AUTs

The manager of an AUT must prepare and supply to the trustee the returns required to be submitted by the trustee to HM Revenue and Customs.

Dealings in scheme property

(1) The authorised fund manager may give instructions to deal in the property of the scheme.
(2) The authorised fund manager must obtain the consent of the depositary for the acquisition or disposal of immovable property.

(3) Where the depositary is of the opinion that a deal in property is not within the rules in this sourcebook and the instrument constituting the scheme, the depositary may require the authorised fund manager to cancel the transaction or make a corresponding disposal or acquisition to secure restoration of the previous situation and to meet any resulting loss or expense.

(4) Where the depositary is of the opinion that:

(a) an acquisition of property necessarily involves documents evidencing title being kept in the custody of a person other than the depositary; and

(b) the depositary cannot reasonably be expected to accept the responsibility which would otherwise be placed upon it if it were to permit custody by that other person;

the authorised fund manager must, if the depositary so requests, either cancel the transaction or make a corresponding disposal.

Duty to inform the FCA

SUP 15.3 (General notification requirements) contains rules and guidance on matters that should be notified to the FCA. Such matters include, but are not limited to, any circumstance that the depositary becomes aware of whilst undertaking its functions or duties in COLL 6.6.4 R (1) (General duties of the depositary) that the FCA would reasonably view as significant.

Control by the depositary over the scheme property

(1) The depositary of an authorised fund is responsible for the safekeeping of all of the scheme property (other than tangible movable property) entrusted to it and must:

(a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the scheme;

(b) ensure that scheme property in registered form is, as soon as practicable, registered in the name of the depositary, its nominee or a person retained by it under COLL 6.6.15 R (1) (Committees and delegation);

(c) take into its custody or under its control documents of title to the scheme property other than for transactions in derivatives or forward transactions; and

(d) ensure that any transaction in derivatives or a forward transaction is entered into so as to ensure that any resulting benefit is received by the depositary.
(2) The depositary is responsible for the collection of income due to be paid for the account of the authorised fund.

(3) The depositary must keep for six years such records as are necessary:

(a) to enable it to comply with the rules in this sourcebook; and

(b) to demonstrate that it has achieved such compliance.

Exercise of rights in respect of the scheme property

(1) The depositary must take all necessary steps to ensure that instructions given to it by the authorised fund manager for the exercise of rights attaching to the ownership of scheme property are carried out.

(2) Where the scheme property of an authorised fund contains units in any other scheme managed or otherwise operated by the manager of the AUT or, as the case may be, by any director of the ICVC or by any associate of either, the depositary must exercise any voting rights associated with those units in accordance with what he reasonably believes to be the interests of the unitholders in the authorised fund.

Duties of the depositary and the authorised fund manager: investment and borrowing powers

(1) The authorised fund manager must avoid the scheme property being used or invested contrary to COLL 5, or any provision in the instrument constituting the scheme or the prospectus as referred to in COLL 5.2.4 R (Investment powers: general) and COLL 5.6.4 R (Investment powers: general), except to the extent permitted by (3)(b).

(2) The authorised fund manager must, immediately upon becoming aware of any breach of a provision listed in (1), take action, at its own expense, to rectify that breach, unless the breach occurred as the result of any of the circumstances within (3).

(3) The authorised fund manager must restore compliance with COLL 5 as soon as reasonably practicable having regard to the interests of the unitholders and, in any event, within the period specified in (5) or, when applicable, (6) where:

(a) the scheme property is:

(i) used or invested contrary to COLL 5 (other than a provision excusing a failure to comply on a temporary basis); and

(ii) the contravention is beyond the control of both the authorised fund manager and the depositary; or
(b) there is a transaction ("subsequent transaction") deriving from a right (such as the right to convert stock or subscribe to a rights issue) attributable to an investment ('original investment') of the scheme if:

(i) the subsequent transaction, but for this rule would constitute a breach of COLL 5; and

(ii) at the time of the acquisition of the original investment, it was reasonable for the authorised fund manager, to expect that a breach would not be caused by the subsequent transaction; and

in this rule the reference to the exercise of a right includes the taking effect of a right without any action by or on behalf of the depositary or the authorised fund manager.

(4) Immediately upon the depositary becoming aware of any breach of any provision listed in (1), it must ensure that the authorised fund manager complies with (2).

(5) The maximum period for restoration of compliance under (3) starts at the date of discovery of the relevant circumstance and lasts, subject to any extension under (6):

(a) for six months; or

(b) where the transaction in question was a transaction in derivatives or a forward transaction under COLL 5.2.20 R (Permitted transactions (derivatives and forwards)) or COLL 5.6.13R (Permitted transactions (derivatives and forwards)), until the close of business five business days later; or

(c) where the transaction relates to an immovable, for two years.

(6) The period specified at (5)(b) is extended where:

(a) the transaction involved a delivery of a commodity, from five to twenty business days;

(b) the reason for the contravention in (3)(a) is the inability of the authorised fund manager to close out a transaction because of a limit in the number or value of transactions imposed by an eligible derivatives market, until five business days after:

(i) the inability resulting from any such limit is removed; or

(ii) it becomes, to the knowledge of the authorised fund manager, reasonably practicable and reasonably prudent for the transaction to be closed out in some other way.
The directors of an ICVC may delegate to any one or more of their number any of the directors' powers or duties but remain responsible for the acts or omissions of any such directors.

The directors of an ICVC have the power to retain the services of anyone to assist in the performance of their functions, subject to the duty of the ACD to comply with COLL 6.6.15A R.

The depositary of a scheme may delegate any function to any person save:

(a) the ICVC or any director of the ICVC or the authorised fund manager of a scheme, to assist the depositary to perform:

(i) any function of oversight in respect of the scheme, its directors or the authorised fund manager as the case may be; or

(ii) any function of custody or control of the scheme property;

(b) an associate of the ICVC or of any of the directors of the ICVC or of the authorised fund manager of the scheme (as the case may be) to assist the depositary to perform any function in (a)(i); or

(c) a nominee company or anyone else to assist it to perform the function of being a custodian of documents evidencing title to scheme property of the scheme unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the depositary.

Where a depositary retains services under (4):

(a) if it retains the services of a director of the ICVC, or an associate of such a director or its own associate, or the authorised fund manager of a scheme or that authorised fund manager's associate, then its liability for those services shall remain unaffected; and

(b) in any other case, it will not be held responsible by virtue of the rules in COLL for any act or omission of the person so retained if it can show that:
(i) it was reasonable for it to obtain assistance to perform the function in question;

(ii) the person retained was and remained competent to provide assistance in the performance of the function in question; and

(iii) it had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner.

(6) Where COLL 6.5.5 R (4) (Other directors) applies, the directors have, in respect of the functions of the ACD under COLL 6.6.3 R (Functions of the authorised fund manager), the same rights and responsibilities as for an ACD under this rule and COLL 6.6.15A R.

(1) This rule applies to:

(a) an authorised fund manager (other than an EEA UCITS management company) of an AUT or an ICVC where such AUT or ICVC is a UCITS scheme or a non-UCITS retail scheme; and

(b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) The authorised fund manager has the power to retain the services of any person to assist it in the performance of its functions, provided that:

(a) a mandate in relation to managing investments of the scheme is not given to:

(i) the depositary; or

(ii) any other person whose interests may conflict with those of the authorised fund manager or unitholders; or

(iii) an authorised person operating from an establishment in the United Kingdom unless such person has a Part 4A permission to manage investments; or

(iv) any other person operating from an establishment in a country other than the United Kingdom unless such person:

(A) is authorised or registered in such country for the purpose of asset management; and

(B) is subject to prudential supervision in such country;
and in addition if that person is not an EEA firm, co-operation is ensured between the FCA and the overseas regulator of that person;

(b) the authorised fund manager ensures that at all times it can monitor effectively the relevant activities of any person so retained;

(c) the mandate permits the authorised fund manager to:
   (i) give further instructions to the person so retained; and
   (ii) withdraw the mandate with immediate effect when this is in the interests of the unitholders;

(d) the mandate does not prevent effective supervision of the authorised fund manager and it must not prevent the authorised fund manager from acting, or the scheme from being managed, in the best interests of the unitholders; and

(c) having regard to the nature of the functions to be carried out under the mandate, the person to whom the mandate is given must be qualified and capable of undertaking those functions.

(3) Subject to the provisions of the OEIC Regulations and
   ■ COLL 6.6.15 R (1) and ■ (1A), where services are retained under (2), the responsibility which the authorised fund manager had in respect of such services prior to that retention of services will remain unaffected.

[Note: article 13 of the UCITS Directive]

Delegation: guidance

(1) Directors of an ICVC, authorised fund managers and depositaries should also have regard to ■ SYSC 8 (Outsourcing). ■ SYSC 8.1.6 R states that a firm remains fully responsible for discharging all of its obligations under the regulatory system if it outsources crucial or important operational functions or any relevant services and activities.

(2) ■ SUP 15.8.6 R (Delegation by UCITS management companies) requires the authorised fund manager of a UCITS scheme to inform the FCA before it delegates one of its duties to another person.

(3) For the purpose of ■ COLL 6.6.15AR (2)(a)(iv), adequate co-operation will be ensured where the FCA has entered into a co-operation agreement of the kind referred to in article 102(3) of the UCITS Directive with the relevant overseas regulator.
Conflicts of interest

(1) The authorised fund manager, any other director of an ICVC and the depositary must take reasonable care to ensure that a transaction within (a) to (f) is not carried out on behalf of the scheme:

(a) putting cash on deposit with an affected person unless that person is an eligible institution or an approved bank and the arm's length requirement in (2) is satisfied;

(b) lending money by an affected person to, or for the account of, the scheme, unless the affected person is an eligible institution or an approved bank, and the arm's length requirement in (2) is satisfied;

(c) the dealing in property by an affected person, to, or with, the scheme (or the depositary for the account of the scheme), unless (3) applies;

(d) the vesting of property (other than cash) by an affected person in the scheme or the depositary for the account of the scheme against the issue of units in the scheme, unless:

(i) (3) applies; or

(ii) the purpose of the vesting is that the whole or part of the property of a body corporate or a collective investment scheme becomes the first property of the scheme and the unitholders of shares or units in the body corporate or collective investment scheme become the first unitholders in the scheme;

(e) the acquisition of scheme property by an affected person from the scheme (or the depositary acting for the account of the scheme), unless COLL 6.2.15 R (In specie issue and cancellation) applies, or unless (3) applies; and

(f) transactions within COLL 5.4 (Stock lending) by an affected person with, or in relation to, the scheme unless the arm's length requirement in (2) is satisfied.

(2) Any transaction in (1)(a),(b) or (f) must be at least as favourable to the scheme as any comparable arrangement on normal commercial terms negotiated at arm's length between the affected person and an independent party.

(3) There is no breach of (1)(c), (d) or (e) if the transaction meets the requirements of (4) (best execution on-exchange), (5) (independent valuation) or (6) (arm's length transaction).

(4) There is best execution on-exchange for the purposes of (3) if:

(a) the property is an approved security or an approved derivative;
(b) the transaction is effected under the rules of the relevant exchange with or through a person who is bound by those rules;

(c) there is evidence in writing of the effecting of the transaction and of its terms; and

(d) the authorised fund manager has taken all reasonable steps to ensure that the transaction is effected on the terms which are the best available for the scheme.

(5) There is independent valuation for the purposes of (3) if:

(a) the value of the property is certified in writing for the purpose of the transaction by a person approved by the depositary as:

(i) independent of any affected person; and

(ii) qualified to value property of the relevant kind; and

(b) the depositary is of the opinion that the terms of the transaction are not likely to result in any material prejudice to unitholders.

(6) There is an arm's length transaction for the purposes of (3) if:

(a) paragraph (4)(a) is not satisfied;

(b) it is not reasonably practicable to obtain an independent valuation under (5); and

(c) the depositary has reliable evidence that the transaction is or will be on terms which satisfy the arm's length requirement in (2).

Conflicts of interest: guidance

(1) [deleted]

(2) Regulation 44 of the OEIC Regulations (Invalidity of certain transactions involving directors) is relevant to the application of COLL 6.6.17 R.
6.6A Duties of AFMs in relation to UCITS schemes and EEA UCITS schemes

Application

(1) This section applies to:

(a) an authorised fund manager of a UCITS scheme, a depositary, an ICVC and any other director of an ICVC which is a UCITS scheme; and

(b) subject to (2), a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme under the freedom to provide cross border services.

(2) COLL 6.6A.6 R (Strategies for the exercise of voting rights) also applies to a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State, as well as applying in accordance with (1).

(3) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholder

An authorised fund manager of a UCITS schemes or a UK UCITS management company of an EEA UCITS scheme must:

(1) ensure that the unitholders of any such scheme it manages are treated fairly;

(2) refrain from placing the interests of any group of unitholders above the interests of any other group of unitholders;

(3) apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market;
(4) (a) ensure that fair, correct and transparent pricing models and valuation systems are used for each scheme it manages, in order to comply with the duty to act in the best interests of the unitholders; and

(b) be able to demonstrate that the investment portfolio of each such scheme it manages is accurately valued; and

(5) act in such a way as to prevent undue costs being charged to any such scheme it manages and its unitholders.

[Note: article 22 of the UCITS implementing Directive]

6.6A.3

Examples of malpractices for the purposes of COLL 6.6A.2R (3) would include market timing and late trading, which may have detrimental effects on unitholders and may undermine the functioning of the market.

Examples of undue costs for the purposes of COLL 6.6A.2R (5) would include unreasonable charges and excessive trading, taking into account the scheme's investment objectives and policy.

[Note: recital (18) of the UCITS implementing Directive]

Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must:

(1) ensure a high level of diligence in the selection and ongoing monitoring of scheme property, in the best interests of the scheme and the integrity of the market;

(2) ensure it has adequate knowledge and understanding of the assets in which any scheme it manages is invested;

(3) establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of any UCITS scheme or EEA UCITS scheme it manages are carried out in compliance with the objectives and the investment strategy and risk limit system of the scheme;

(4) when implementing its risk management policy, and where it is appropriate after taking into account the nature of a proposed investment:

(a) formulate forecasts and analyse the investment's impact on the portfolio composition, liquidity and risk and reward profile of the scheme before carrying out the investment; and
(b) carry out the analysis in (a) only on the basis of reliable and up-to-date information, both in quantitative and qualitative terms;

(5) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities; and

(6) before entering into any arrangements of the type referred to in (5):
   (a) take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively; and
   (b) establish methods for the on-going assessment of the standard of performance of the third party.

[Note: article 23 of the UCITS implementing Directive]

Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company

The authorised fund manager of a UCITS scheme or the UK UCITS management company of an EEA UCITS scheme must comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

[Note: article 14(1)(e) of the UCITS Directive]

Strategies for the exercise of voting rights

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must develop adequate and effective strategies for determining when and how voting rights attached to ownership of scheme property, or the instruments held by an EEA UCITS scheme, are to be exercised, to the exclusive benefit of the scheme concerned.

(2) The strategy referred to in (1) must determine measures and procedures for:
   (a) monitoring relevant corporate events;
   (b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant scheme; and
   (c) preventing or managing any conflicts of interest arising from the exercise of voting rights.
(3) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must make available to unitholders:

(a) a summary description of the strategies referred to in (1);

and

(b) free of charge and on their request, details of the actions taken on the basis of the strategies referred to in (1).

[Note: article 21 of the UCITS implementing Directive]
6.7 Payments

Application

6.7.1 FCA

This section applies in accordance with COLL 6.7.2 R (Table of application).

Table of application

6.7.2 FCA

Table of Application. This table belongs to COLL 6.7.1 R.

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<th>Manager of an AUT</th>
<th>Trustee of an AUT</th>
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Note: "x" means "applies", but not every paragraph in every rule will necessarily apply.

Purpose

6.7.3 FCA

(1) This section assists in securing the statutory objective of protecting consumers through requirements which govern the payments out of scheme property and charges imposed on investors when buying or selling units.
(2) The requirements clarify the nature of permitted charges and payments and ensure the disclosure for unitholders of any increases in charges and payments to the authorised fund manager.

(3) The prospectus should make adequate provision for payments from an authorised fund. This section:
   (a) prohibits, or stipulates the conditions on which, the payments out of the scheme property can be made;
   (b) requires certain payments to be conditional on disclosure in the prospectus; and
   (c) governs the allocation of payments between capital and income.

Payments out of scheme property

(1) The only payments which may be recovered from the scheme property of an authorised fund are those in respect of:
   (a) remunerating the parties operating the authorised fund;
   (b) the administration of the authorised fund; or
   (c) the investment or safekeeping of the scheme property.

(2) No payment under this rule can be made from scheme property if it is unfair to (or materially prejudices the interests of) any class of unitholders or potential unitholders.

(3) Paragraphs (1) and (2) do not apply to any payments in relation to any taxation payable by the authorised fund.

(4) Paragraphs (1) and (2) do not permit payments to third parties for the safekeeping or administration of units on behalf of unitholders rather than on behalf of the authorised fund.

Payments out of scheme property: guidance

(1) Details of permissible types of payments out of scheme property are to be set out in full in the prospectus in accordance with COLL 4.2.5R (13) and COLL 4.2.5R (14) (Table: contents of the prospectus).

(2) An authorised fund manager should consider whether a payment to an affected person is unfair because of its amount or because it confers a disproportionate benefit on the affected person.

(3) COLL 6.7.4 R (2) (Payments out of scheme property) does not invalidate a payment that gives rise to a difference between the rights of separate classes of unit that relates solely to the payments that may be taken out of scheme property.

(4) Payments to third parties as referred to in COLL 6.7.4 R (4) include payments to platform service providers and other similar platform services.
## Performance fees

(1) For the authorised fund manager’s periodic charge or for payments out of scheme property to the investment adviser, the prospectus may permit a payment based on a comparison of one or more aspects of the scheme property or price in comparison with fluctuations in the value or price of property of any description or index or other factor designated for the purpose (a “performance fee”).

(2) Any performance fee should be specified in the appropriate manner in the prospectus and should be consistent with § COLL 6.7.4 R. In determining whether the performance fee is consistent the authorised fund manager should have regard to factors such as:

(a) it should be calculated and paid after consideration of all other payments;

(b) where it is made on the basis of performance of the authorised fund against any index or any other factor, that benchmark must be reasonable given the investment objectives of the authorised fund and must be consistently applied;

(c) it may be based on performance above a defined positive rate of return (the "hurdle rate"), which may be fixed or variable;

(d) where (b) or (c) applies, the benchmark or hurdle rate may be carried forward to future accrual periods;

(e) the period over which it accrues and the frequency with which it crystallises should be reasonable; and

(f) except where allowed by § COLL 6.7.4 R (1), there are to be no arrangements to adjust the price or value of sale or repurchase transactions in respect of performance fees accrued or paid if the transactions occur within the accrual period of the charge.

(3) In accordance with § COLL 4.2.5R (13) (Table: contents of prospectus) the prospectus should contain the maximum amount or percentage of scheme property that the performance fee might represent in an annual accounting period. This disclosure should be given in plain language together with examples of the operation of the performance fee.

## Charges on buying and selling units

(1) No person other than the authorised fund manager may impose charges on unitholders or potential unitholders when they buy or sell units.

(2) An authorised fund manager must not make any charge or levy in connection with:

(a) the issue or sale of units except where a preliminary charge is made in accordance with the prospectus of the scheme which must be either a fixed amount or calculated as a percentage of the price of a unit; or

(b) the redemption or cancellation of units, except a redemption charge made in accordance with the prospectus current at the time the relevant units were purchased by the unitholder.
(3) This rule is subject to ■ COLL 6.3.7 R (SDRT provision), ■ COLL 6.3.8 R (Dilution) and ■ COLL 11.3.11 R (Obligations of the master UCITS).

Charges on buying and selling units: guidance

(1) To introduce a new charge for the sale or redemption of units, or any new category of remuneration for its services or increase the rate stated in the prospectus, the authorised fund manager will need to comply with ■ COLL 4.2.5 R (Table: contents of prospectus) and ■ COLL 4.3 (Approvals and notifications).

(2) A redemption charge may be expressed in terms of amount or percentage. It may also be expressed as diminishing over the time during which the unitholder has held the units or be calculated on the basis of the unit price performance of the units. However any redemption charge should not be such that it could be reasonably regarded as restricting any right of redemption.

(3) The prospectus should contain a statement as to the determination of the order in which units which have been acquired at different times by a unitholder are to be taken to be redeemed or cancelled for the purpose of the imposition of the redemption charge.

Charges for the exchange of units in an umbrella

For a scheme which is an umbrella, an authorised fund manager must not make a charge on an exchange of units in one sub-fund for units in another sub-fund unless the amount of the charge is not more than the amount stated in the current prospectus.

Allocation of payments to income or capital

(1) The authorised fund manager must determine whether a payment is to be made from the income property or capital property of an authorised fund, and in doing so the authorised fund manager must:

(a) pay due regard to whether the nature of the cost is income related or capital related and the objective of the scheme; and

(b) agree the treatment of any payment with the depositary.

(2) Where, for any class of units for any annual accounting period, the amount of the income property is less than the income distributed, the shortfall must, as from the end of that period, be charged to the capital account and must not subsequently be transferred to the income account.

Allocation of payments to income or capital: guidance

(1) Any payment as a result of effecting transactions for the authorised fund should be made from the capital property of the scheme.
(2) Other than the payments in (1), all other payments should be made from income property in the first instance but may be transferred to the capital account in accordance with COLL 6.7.10 R (1) (Allocation of payments to income or capital).

(3) For payments transferred to the capital property of the scheme in accordance with (2), the prospectus should disclose the matters in COLL 4.2.5R (14).

(4) If the authorised fund manager wishes to make a change in relation to the allocation of payments, the procedures in COLL 4.3 (Approvals and notifications) will be relevant.

**Prohibition on promotional payments**

6.7.12 FCA

(1) No payment may be made from scheme property to any person, other than a payment to the authorised fund manager permitted by the rules in COLL, for the acquisition or promotion of the sale of units in an authorised fund.

(2) Paragraph (1) does not apply to the costs an authorised fund incurs preparing and printing the simplified prospectus, key investor information document, key features document or key features illustration, provided the prospectus states, in accordance with COLL 4.2.5 R (13) and (14) (Table: contents of the prospectus), that these costs are properly payable to the authorised fund manager from scheme property.

**Prohibition on promotional payments: guidance**

6.7.13 FCA

Examples of payments which are not permitted by COLL 6.7.12 R include:

(1) commission payable to intermediaries (such payments should normally be borne by the authorised fund manager);

(2) payments or costs in relation to the preparation or dissemination of financial promotions (other than costs allowed under COLL 6.7.12 R (2)).

(3) [deleted]

**Movable or immovable property**

6.7.14 FCA

An ICVC must not incur any expense for the use by it of any movable or immovable property except to the extent that such property is necessary for the direct pursuit of its business or held in accordance with its investment objectives.

**Payment of liabilities on transfer of assets**

6.7.15 FCA

(1) Where the property of an authorised fund is transferred to a second authorised fund (or to the depositary for the account of the authorised fund) in consideration of the issue of units in the second authorised fund to unitholders in the first scheme, (2) applies.
(2) The ICVC, its depositary or the trustee of the AUT as the successor in title to the property transferred, may pay out of the scheme property any liability arising after the transfer which, had it arisen before the transfer, could properly have been paid out of the property transferred, but only if:

(a) there is nothing in the instrument constituting the scheme of the authorised fund expressly forbidding the payment; and

(b) the authorised fund manager is of the opinion that proper provision was made for meeting such liabilities as were known or could reasonably have been anticipated at the time of the transfer.

Exemptions from liability to account for profits

An affected person is not liable to account to another affected person or to the unitholders of any scheme for any profits or benefits it makes or receives that are made or derived from or in connection with:

(1) dealings in the units of a scheme; or

(2) any transaction in scheme property; or

(3) the supply of services to the scheme;

where disclosure of the non-accountability has been made in the prospectus of the scheme.

Allocation of scheme property

For a scheme which is an umbrella, any assets to be received into, or any payments out of, the scheme property which are not attributable to one sub-fund only, must be allocated by the authorised fund manager between the sub-funds in a manner which is fair to the unitholders of the umbrella generally.
6.8 Income: accounting, allocation and distribution

Application

6.8.1 FCA

(1) This section applies to an authorised fund manager.

(2) COLL 6.8.4 R (1) (Unclaimed, de minimis and joint unitholder distributions) also applies to the depositary of an authorised fund.

(3) Except in the case of COLL 6.8.2 R (1) (Accounting periods) and COLL 6.8.3 R (1) (Income allocation and distribution), COLL 6.8 applies as if each sub-fund were a separate authorised fund.

Accounting periods

6.8.2 FCA

(1) An authorised fund must have:

(a) an annual accounting period;
(b) a half-yearly accounting period; and
(c) an accounting reference date.

(2) A half-yearly accounting period begins when an annual accounting period begins and ends on:

(a) the day which is six months before the last day of that annual accounting period; or
(b) some other reasonable date as set out in the prospectus of the scheme.

(3) The first annual accounting period of a scheme must begin:

(a) on the first day of any period of initial offer; or
(b) in any other case, on the date of the relevant authorisation order;

and in either case must end on the next accounting reference date, except where (4) applies.
(4) When the accounting reference date of a scheme falls less than six months after the beginning of the first annual accounting period, that period may be extended until the subsequent accounting reference date.

(5) Each annual accounting period of a scheme subsequent to the first period must begin immediately after the end of the previous period and must end on the next accounting reference date, except where (6) or (6A) applies.

(5A) Each annual accounting period or half-yearly accounting period must end either at the end of the day determined under this rule or, if the authorised fund manager so decides, at the last valuation point on that day.

(6) Following a revision to the prospectus of the scheme that includes a change to the accounting reference date, the annual accounting period may be shortened, or extended by up to six months, so as to end on the new accounting reference date.

(6A) If the authorised fund manager notifies the depositary that a particular annual accounting period or half-yearly accounting period is to end on a specified day, which is not more than seven days after, and not more than seven days before, the day on which the period would otherwise end under this rule, that notice is to have effect provided it is given before the day on which the period would otherwise end.

(7) The authorised fund manager must consult the depositary and the scheme's auditor before shortening or extending an accounting period in accordance with (4) or (6).

Income allocation and distribution

The allocation or distribution of the income of a UCITS scheme must be determined in accordance with its instrument constituting the scheme, its prospectus and the general law of the United Kingdom.

[Note: article 86 of the UCITS Directive]

(1) An authorised fund must have an annual income allocation date, which must be within four months of the end of the relevant annual accounting period.
(2) An **authorised fund** may have *interim income allocation dates* and one or more *interim accounting periods* for each of those dates and, if it does, the *interim income allocation date* must be within four months of the end of the relevant *interim accounting period(s)*.

(3) An **authorised fund** must have a *distribution account* to which the amount of income allocated to *classes of units* that distribute income is transferred as at the end of the relevant accounting period.

(3A) The amount available for income allocations must be calculated by:

(a) taking the net revenue after taxation determined in accordance with the **IMA SORP**;

(b) making any transfers, to the extent permitted by the **prospectus**, between the *income account* and the *capital account* in order that the amount available for income allocations is calculated as if the revenue from *debt securities* had been determined disregarding the effect of:

(i) the change in the Retail Prices Index during the period, provided that the policy is to invest predominantly in *index-linked securities* and the transfer relates only to amounts in respect of index-linked gilt-edged securities; or

(ii) amortisation, provided that the amount available for income allocations is not less than if such transfers had not been made;

(c) making any other transfers between the *income account* and the *capital account* that are required in relation to:

(i) stock dividends;

(ii) *income equalisation* included in income allocations from other *collective investment schemes*;

(iii) the allocation of payments in accordance with **COLL 6.7.10 R** (Allocation of payments to income or capital);

(iv) taxation;

(v) the aggregate amount of *income property* included in units issued, cancelled and converted during the period; and

(vi) amounts determined by the **authorised fund manager** to be the reportable income of other *collective investment schemes*. 
(4) If income is allocated during an accounting period:

(a) with effect from the end of the relevant annual or interim accounting period, the amount of income allocated to classes of units that accumulate income becomes part of the capital property and requires an adjustment to the proportion of the value of the scheme property to which they relate if other classes of units are in issue during the period;

(b) the adjustment in (a) must ensure the price of units remains unchanged despite the transfer of income; and

(c) the amount of any interim allocation may not be more than the amount which, in the opinion of the authorised fund manager, would be available for allocation if the interim accounting period and all previous interim accounting periods in the same annual accounting period, taken together, were an annual accounting period.

Allocation of income to different classes of unit

In the case of sub-funds with more than one class of units in issue, the proportionate interests of each class of units in the amount available for income allocations should be determined in accordance with the instrument constituting the scheme.

Unclaimed, de minimis and joint unitholder distributions

(1) Any distribution remaining unclaimed after a period of six years, or such longer time specified by the prospectus, must become part of the capital property.

(2) The authorised fund manager and the depositary may agree a de minimis amount in respect of which a distribution of income is not required, and how any such amounts are to be treated.

(3) Distributions made to the first named joint unitholder on the register will be as effective a discharge to the trustee and manager, as if the first named joint unitholder had been a sole unitholder.

Guidance: contents of the prospectus

COLL 4.2.5 R (Table: contents of prospectus) requires the details of COLL 6.8.2 R, COLL 6.8.3 R (1) and COLL 6.8.3 R (2) and COLL 6.8.4 R (1) and COLL 6.8.4 R (2) to be contained in the prospectus as well as when, and how, the distribution will be paid (e.g. by cheque or BACS) and also how any unclaimed distributions are to be processed.
6.9 Independence, names and UCITS business restrictions

Application

This section applies to an authorised fund manager, a depositary, an ICVC and any other directors of an ICVC.

Independence of depositaries and scheme operators

(1) Regulation 15(8)(f) of the OEIC Regulations (Requirements for authorisation) requires independence between the depositary, the ICVC and the ICVC’s directors, as does section 243(4) of the Act (Authorisation orders) for the trustee and manager of an AUT. COLL 6.9.3 G to COLL 6.9.5 G give FCA’s view of the meaning of independence of these relationships. An ICVC, its directors and depositary or a manager and a trustee of an AUT are referred to as “relevant parties” in this guidance.

(2) There are at least three possible kinds of links between the relevant parties:
   (a) directors in common;
   (b) cross-shareholdings; and
   (c) contractual commitments.

(3) If any of these links exist between the relevant parties, the FCA will have regard to COLL 6.9.3 G to COLL 6.9.5 G in determining whether there is independence.

Independence: influence by directors

(1) Independence is likely to be lost if, by means of executive power, either relevant party could control the action of the other.

(2) The board of one relevant party should not be able to exercise effective control of the board of another relevant party. Arrangements which might indicate this situation include quorum provisions and reservations of decision-making capacity of certain directors.

(3) For an AUT, the FCA would interpret the concept of directors in common to include any directors of associates of one relevant party who are simultaneously directors of the other relevant party.

(4) For an ICVC, independence would not be met if:
(a) a director of the ICVC or any associate of the director is a director, an employee, or both of the depositary; or

(b) a director of an ICVC:

   (i) has a direct or indirect shareholding for investment purposes of more than 0.5% of the votes at a general meeting or a meeting of holders of the class of share concerned of the depositary of that ICVC; or

   (ii) has any other relationship with the depositary which might reasonably be expected to give rise to a potential conflict of interest.

Independence: influence by shareholding

Independence is likely to be lost if either of the relevant parties could control the actions of the other by means of shareholders’ votes. The FCA considers this would happen if any shareholding by one relevant party and their respective associates in the other exceeds 15% of the voting share capital, either in a single share class or several share classes. The FCA would be willing, however, to look at cross-shareholdings exceeding 15% on a case-by-case basis to consider if there were exceptional grounds for concluding that independence was safeguarded by other means.

Independence: contractual commitments

The FCA would encourage relevant parties to consult it in advance about its view on the consequences of any intended contractual commitment or relationship which could affect independence, whether directly or indirectly.

Undesirable or misleading names

(1) Regulation 15(9) of the OEIC Regulations and section 243(8) of the Act require that an authorised fund’s name must not be undesirable or misleading. This section contains guidance on some specific matters the FCA will consider in determining whether the name of an authorised fund is undesirable or misleading. It is in addition to the requirements of regulation 19 of the OEIC Regulations (Prohibition on certain names).

(2) The FCA will take into account whether the name of the scheme:

   (a) is substantially similar to the name of another authorised fund;

   (b) implies that the authorised fund has merits which are not, or might not be, justified;

   (c) implies that the authorised fund manager has particular qualities, which may not be justified;

   (d) is inconsistent with the authorised fund’s investment objectives or policy;

   (e) implies that the authorised fund is not an authorised fund (for example, describing the authorised fund as a "plan" or "account" are unlikely to be acceptable); and

   (f) might mislead investors into thinking that persons other than the authorised fund manager are responsible for the authorised fund.
(3) The FCA is unlikely to approve a name of an authorised fund that includes the word “guaranteed” unless:

(a) the guarantee is given by:

(i) an authorised person;

(ii) a person authorised by a Home State regulator; or

(iii) a person subject to prudential supervision in accordance with criteria defined by EU law or prudential rules at least as stringent as those laid down by EU law;

other than the authorised fund manager or the depositary.

(b) the authorised fund manager can demonstrate that the guarantor has the authority and resources to honour the terms of the guarantee;

(c) the guarantee covers all unitholders within the authorised fund and is legally enforceable by each unitholder who is intended to benefit from it or by a person acting on that unitholder’s behalf;

(d) the guarantee relates to the total amount paid for a unit which includes any charge or other costs of buying or selling units in the authorised fund;

(e) the guarantee provides for payment at a specified date or dates and is unconditional although reasonable commercial exclusions such as force majeure may be included; and

(f) where the guarantee applies to different classes of unit, it is identical in its application to all classes except for the differences attributable to income already received or charges already suffered by the different classes of unit.

(4) The name of an authorised fund may indicate a guaranteed capital return or income return or both but only if the total amount paid for a unit is guaranteed in accordance with (3).

(5) The FCA is unlikely to approve a name of an authorised fund that includes words implying a degree of capital security (such as “capital protected” or anything with a similar meaning) unless the degree of capital security is apparent from the name and clearly stated in the prospectus, and:

(a) the principles in (3) are satisfied except that, for the purposes of (3)(d), the guarantee may relate to an amount not materially less than the total amount paid for a unit; or

(b) the investment objective and investment policy for the authorised fund are such as to show a clear intention to provide a material degree of security in respect of the total amount paid for a unit.

(6) When determining whether (5) is complied with, the FCA will take into account whether the degree of capital security implied by the name fairly reflects the nature of the arrangements for providing that security. This assessment will take place on a case-by-case basis.

Undesirable or misleading names: umbrellas

The authorised fund manager must ensure that the name of a sub-fund or of a class of unit is not undesirable or misleading.
Undesirable or misleading names: umbrellas - guidance

When deciding whether COLL 6.9.7R is complied with, the FCA will take into account COLL 6.9.6G. COLL 6.9.7R applies generally and not just to the names that include the words "guaranteed" or "capital protected".

Restrictions on the use of the term 'money market fund'

An authorised fund or a sub-fund may only be named or marketed as a 'money market fund' if it is:

1. a qualifying money market fund; or
2. a short-term money market fund; or
3. a money market fund.

[Note: Box 1, paragraph 2 of CESR's guidelines on a common definition of European money market funds]

Restrictions of business for UCITS management companies

A UCITS management company must not engage in any activities other than:

1. acting as:
   a. an authorised fund manager of an authorised fund; or
   b. an operator of any other collective investment scheme for which the firm is subject to prudential supervision;
2. activities for the purposes of or in connection with those in (1);
3. collective portfolio management, including without limitation:
   a. investment management;
   b. administration:
      i. legal and fund management accounting services;
      ii. customer enquiries;
      iii. valuation and pricing (including tax returns);
      iv. regulatory compliance monitoring;
      v. maintenance of unitholder register;
      vi. distribution of income;
      vii. unit issues and redemptions;
      viii. contract settlements (including certificate dispatch); and
      ix. record keeping; and
(c) marketing;

(4) managing investments where the relevant portfolio includes one or more financial instruments;

(5) advising on investments where:
    (a) the firm has a permission for the activity in (4); and
    (b) each of the instruments are financial instruments; and

(6) safeguarding and administration of collective investment scheme units where the firm has a permission for the activity in (4).

Connected activities: guidance

(1) Examples of the connected activities referred to in COLL 6.9.9 R (2) include management of group plans, as long as they are dedicated to investments in unit trust schemes and OEICs for which the firm acts as an authorised fund manager.

(2) The restrictions of business imposed by COLL 6.9.9R reflect the position under Article 6 of the UCITS Directive. In accordance with recital (12) of the Directive the activities referred to at COLL 6.9.9R (3) (a) to COLL 6.9.9R (3) (c) may be performed on behalf of EEA UCITS management companies.

Notification to the FCA in its role as registrar of ICVCs

An ICVC must notify the FCA within 14 days of the occurrence of any of the following:

(1) any amendment to the instrument of incorporation;

(2) any change in the address of the head office of the ICVC;

(3) any change of director;

(4) any change of depositary;

(5) in respect of any director or depositary, any change in the information mentioned in regulation 12(1)(b) or (c) of the OEIC Regulations (Applications for authorisation);

(6) any change of the auditor of the ICVC;

(7) any order in respect of the ICVC made by virtue of regulation 70 of the OEIC Regulations (Mergers and divisions).
6.10 Senior personnel responsibilities

Application

(1) This section applies to:
   (a) an authorised fund manager of a UCITS scheme; and
   (b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

Senior personnel responsibilities

In complying with SySC 4.3.1 R (Responsibility of senior personnel), an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure that its senior personnel:

(1) are responsible for the implementation of the general investment policy for each scheme it manages, as defined, where relevant, in the prospectus or the instrument constituting the scheme;

(2) oversee the approval of investment strategies for each scheme it manages;

(3) are responsible for ensuring that the authorised fund manager or UK UCITS management company has a permanent and effective compliance function as referred to in SySC 6.1 (Compliance), even if this function is performed by a third party;

(4) ensure and verify on a periodic basis that the general investment policy, the investment strategies and the risk limit system of each scheme it manages are properly and effectively implemented.
and complied with, even if the risk management function is performed by a third party;

(5) approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each scheme it manages, so as to ensure that those decisions are consistent with the approved investment strategies; and

(6) approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in COLL 6.12.5 R (Risk management policy), including the risk limit system for each scheme it manages.

[Note: article 9(2) of the UCITS implementing Directive]

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure that its senior personnel receive, on a regular basis, reports on the implementation of investment strategies and of the internal procedures for taking the investment decisions referred to in COLL 6.10.2R (2) to COLL 6.10.2R (5).

[Note: article 9(5) of the UCITS implementing Directive]
6.11 Risk control and internal reporting

Application

(1) This section applies to:
   (a) an authorised fund manager of a UCITS scheme; and
   (b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

Permanent risk management function

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish and maintain a permanent risk management function.

(2) The function referred to in (1) must be hierarchically and functionally independent from operating units, except where such independence would not be appropriate and proportionate in view of the nature, scale and complexity of the authorised fund manager's or UK UCITS management company's business and of each scheme it manages.

(3) The authorised fund manager or UK UCITS management company must be able to demonstrate that:
   (a) appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities; and
   (b) its risk management process satisfies the requirements of COLL 6.12.3 R (Risk management process) or, where appropriate, the relevant UCITS Home State measures implementing article 51 of the UCITS Directive.
[Note: articles 12(1) and 12(2) of the UCITS implementing Directive]

Where the risk management function required under COLL 6.11.2 R (1) is not hierarchically and functionally independent, the authorised fund manager or UK UCITS management company should nevertheless be able to demonstrate that its risk management process satisfies the requirements of COLL 6.12.3 R (Risk management process) and that, in particular, the appropriate safeguards have been adopted.

[Note: article 12(2) third paragraph and recital (12) of the UCITS implementing Directive]

Duties of the permanent risk management function

(1) The permanent risk management function must:

(a) implement the risk management policy and procedures;

(b) ensure compliance with the risk limit system, including statutory limits concerning global exposure and counterparty risk, as required by COLL 5.2 (General investment powers and limits for UCITS schemes) and COLL 5.3 (Derivative exposure) or, where appropriate, the relevant UCITS Home State measures implementing articles 41, 42 and 43 of the UCITS implementing Directive;

(c) provide advice to the governing body, as regards the identification of the risk profile of each scheme it manages;

(d) provide regular reports to the governing body and, where it exists, the supervisory function on:

(i) the consistency between the current level of risk incurred by each scheme it manages and the risk profile agreed for that scheme;

(ii) the compliance of each scheme it manages with the risk limit system referred to in (b); and

(iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;

(e) provide regular reports to the senior personnel outlining the current level of risk incurred by the relevant scheme and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate remedial action can be taken; and

(f) review and support, where appropriate, the arrangements for the valuation of OTC derivatives, as referred to in COLL 5.2.23 R (OTC transactions in derivatives), COLL 5.2.23C R (Valuation of OTC derivatives) and in this rule or, where appropriate, the relevant UCITS Home State measures implementing article 44 of the UCITS implementing Directive.
(2) The permanent risk management function must have the authority and access to all relevant information necessary to fulfil the duties set out in (1).

[Note: articles 12(3), 12(4) and 44(3) of the UCITS implementing Directive]
6.12 Risk management policy and risk measurement

Application

This section applies to:

(1) an authorised fund manager and a depositary of a UCITS scheme; and

(2) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

In the FCA’s view the requirements relating to risk management policy and risk measurement set out in this section are the regulatory responsibility of the management company’s Home State regulator but to the extent that they constitute fund application rules, are also the responsibility of the UCITS’ Home State regulator. As such, these responsibilities may overlap between the competent authorities of the Home and Host States. EEA UCITS management companies providing collective portfolio management services for a UCITS scheme, whether from a branch in the United Kingdom or under the freedom to provide cross border services, are therefore advised that they will be expected to comply with the requirements of this section, except for COLL 6.12.3 R (2) which, as a notification requirement, is a matter reserved for the rules of the management company’s Home State.

Risk management process

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must use a risk management process enabling it to monitor and measure at any time the risk of the scheme’s positions and their contribution to the overall risk profile of the scheme.

(2) An authorised fund manager (excluding the EEA UCITS management company of a UCITS scheme) or a UK UCITS management company of an EEA UCITS scheme must regularly notify the following details of the risk management process to the FCA and at least on an annual basis:
(a) a true and fair view of the types of derivatives and forward transactions to be used within the scheme together with their underlying risks and any relevant quantitative limits; and

(b) the methods for estimating risks in derivative and forward transactions.

[Note: article 51(1), first and third paragraphs, of the UCITS Directive and article 45(1) of the UCITS implementing Directive]

6.12.4 FCA

(1) The risk management process in COLL 6.12.3 R should take account of the investment objectives and policy of the scheme as stated in the most recent prospectus.

(2) The depositary of a UCITS scheme should take reasonable care to review the appropriateness of the risk management process in line with its duties under COLL 6.6.4 R (General duties of the depositary) and COLL 6.6.14 R (Duties of the depositary and authorised fund manager: investment and borrowing powers), as appropriate.

(3) An authorised fund manager or a UK UCITS management company is expected to demonstrate more sophistication in its risk management process for a scheme with a complex risk profile than for one with a simple risk profile. In particular, the risk management process should take account of any characteristic of non-linear dependence in the value of a position to its underlying.

(4) An authorised fund manager or a UK UCITS management company should take reasonable care to establish and maintain such systems and controls as are appropriate to its business as required by SYSC 4.1 (General requirements).

(5) The risk management process should enable the analysis required by COLL 6.12.3 R to be undertaken at least daily or at each valuation point, whichever is more frequent.

(6) An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme should undertake the risk assessment required by COLL 5.2.20R (7)(d) (Permitted transactions (derivatives and forwards)) with the highest care when the counterparty to the derivative transaction is an associate of the authorised fund manager, the UK UCITS management company or the credit issuer.

[Note: CESR’s UCITS eligible assets guidelines with respect to article 8(2)(d) of the UCITS eligible assets Directive]

Risk management policy

6.12.5 FCA

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must establish, implement and maintain an adequate and documented risk management policy for identifying the risks to which that scheme is or might be exposed.
(2) The risk management policy must comprise such procedures as are necessary to enable the authorised fund manager or UK UCITS management company to assess the exposure of each UCITS it manages to market risk, liquidity risk and counterparty risk, and to all other risks, including operational risk, that might be material for that scheme.

(3) The risk management policy must address at least the following elements:

(a) the techniques, tools and arrangements that enable the authorised fund manager or UK UCITS management company to comply with the obligations set out in this section and COLL 5.3 (Derivative exposure);

(b) the allocation of responsibilities within the authorised fund manager or UK UCITS management company pertaining to risk management; and

(c) the terms, contents and frequency of reporting of the risk management function referred to in COLL 6.11.2 R (Permanent risk management function) to the governing body, senior personnel and, where appropriate, to the supervisory function.

(4) To meet its obligations in (1), (2) and (3) an authorised fund manager or a UK UCITS management company must take into account the nature, scale and complexity of its business and of the UCITS it manages.

[Note: article 38 of the UCITS implementing Directive]

UK UCITS management companies operating EEA UCITS schemes are advised that to the extent that the matters referred to in COLL 6.12.5 R (3)(a) are viewed by the UCITS Home State regulator as falling under its responsibility, they will be expected to comply with the UCITS Home State measures implementing articles 40 and 41 of the UCITS implementing Directive.

Monitoring of risk management policy

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must assess, monitor and periodically review:

(a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in COLL 6.12.5 R;

(b) the level of compliance by the authorised fund manager or the UK UCITS management company with the risk management policy and with those arrangements, processes and techniques referred to in COLL 6.12.5 R; and
(c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

(2) The authorised fund manager (excluding an EEA UCITS management company of a UCITS scheme) or a UK UCITS management company of an EEA UCITS scheme must notify the FCA of any material changes to the risk management process.

[Note: article 39(1) and 39(2) of the UCITS implementing Directive]

UK UCITS management companies are advised that when they applied for authorisation from the FCA under the Act, their ability to comply with the requirements in COLL 6.12.7 R would have been assessed by the FCA as an aspect of their fitness and properness in determining whether the threshold conditions set out in Schedule 6 (Threshold conditions) of the Act were met. Firms are further advised that their compliance with these requirements is subject to review by the FCA on an ongoing basis in determining whether they continue to meet the threshold conditions.

[Note: article 39(3) of the UCITS implementing Directive]

Measurement and management of risk

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must adopt adequate and effective arrangements, processes and techniques in order to:

(a) measure and manage at any time the risks to which that UCITS is or might be exposed; and

(b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with COLL 5.2.11B R (Counterparty risk and issuer concentration) and COLL 5.3 (Derivative exposure).

(2) For the purposes of (1), the authorised fund manager or a UK UCITS management company must take the following actions for each UCITS it manages:

(a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of positions taken and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

(b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
(c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;

(d) establish, implement and maintain a risk limit system for each UCITS;

(e) ensure that the current level of risk complies with that risk limit system; and

(f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to that risk limit system, result in timely remedial actions in the best interests of unitholders.

(3) The arrangements, processes and techniques referred to in (1) should be proportionate in view of the nature, scale and complexity of the business of the authorised fund manager or the UK UCITS management company and the UCITS it manages and be consistent with the UCITS’ risk profile.

[Note: articles 40(1) and 40(2) of the UCITS implementing Directive]

UK UCITS management companies operating EEA UCITS schemes are advised that to the extent that the matters referred to in COLL 6.12.9R (1)(b) are viewed by the UCITS Home State regulator as falling under its responsibility, they will be expected to comply with the UCITS Home State measures implementing articles 41 and 43 of the UCITS implementing Directive.

(1) An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme must employ an appropriate liquidity risk management process in order to ensure that each UCITS it manages is able to comply at any time with COLL 6.2.16 R (Sale and redemption) or the equivalent UCITS Home State measures implementing article 84(1) of the UCITS Directive.

(2) Where appropriate, the authorised fund manager or UK UCITS management company must conduct stress tests to enable it to assess the liquidity risk of the UCITS under exceptional circumstances.

[Note: article 40(3) of the UCITS implementing Directive]

An authorised fund manager or a UK UCITS management company of an EEA UCITS scheme must ensure that, for each UCITS it manages, the liquidity profile of the investments of the scheme is appropriate to the redemption policy laid down in the instrument constituting the scheme or the prospectus.

[Note: article 40(4) of the UCITS implementing Directive]
Authorised fund managers are advised that CESR issued guidelines prior to the revision of the UCITS Directive in 2009 which, to the extent they remain compatible with the rules and other guidance in COLL, should be complied with in applying the rules in this section. These guidelines are available at:

Guidelines - Risk management principles for UCITS (CESR/09-178)

http://www.esma.europa.eu/content/Guidelines-Risk-management-principles-UCITS
6.13 Record keeping

Application

(1) This section applies to:

(a) an authorised fund manager of a UCITS scheme; and
(b) a UK UCITS management company providing collective portfolio management services for an EEA UCITS scheme from a branch in another EEA State or under the freedom to provide cross border services.

(2) This section does not apply to an EEA UCITS management company providing collective portfolio management services for a UCITS scheme under the freedom to provide cross border services.

Recording of portfolio transactions

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure, for each portfolio transaction relating to a scheme it manages, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

(2) The record referred to in (1) must include:

(a) the name or other designation of the scheme and of the person acting on behalf of the scheme;
(b) the details necessary to identify the instrument in question;
(c) the quantity;
(d) the type of the order or transaction;
(e) the price;
(f) for orders, the date and exact time of the transmission of the order and the name or other designation of the person to whom the order was transmitted, or for transactions, the date and
exact time of the decision to deal and execution of the transaction;

(g) the name of the person transmitting the order or executing the transaction;

(h) where applicable, the reasons for the revocation of an order; and

(i) for executed transactions, the counterparty and execution venue identification.

[Note: article 14 of the UCITS implementing Directive]

**Recording of subscription and redemption orders**

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must take all reasonable steps to ensure that every subscription and redemption order it receives relating to units in any such scheme it manages are centralised and recorded immediately after receipt of that order.

(2) The record referred to in (1) must include information on the following:

(a) the relevant scheme;

(b) the person giving or transmitting the order;

(c) the person receiving the order;

(d) the date and time of the order;

(e) the terms and means of payment;

(f) the type of the order;

(g) the date of execution of the order;

(h) the number of units subscribed or redeemed;

(i) the subscription or redemption price for each unit;

(j) the total subscription or redemption value of the units; and

(k) the gross value of the order including charges for subscription or net amount after charges for redemption.

[Note: article 15 of the UCITS implementing Directive]

**Recordkeeping requirements**

(1) An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure the retention of the records referred to in COLL 6.13.2 R and COLL 6.13.3 R for a period of at least five years or, in exceptional circumstances and where directed by the FCA, for...
a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the FCA to exercise its supervisory functions under the UCITS Directive.

(2) Following the termination of its authorisation, an authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must retain its records referred to in (1) for the outstanding term of the five year period or, if it transfers its responsibilities in relation to the UCITS to another authorised fund manager or management company, arrange for those records for the past five years to be accessible to that other manager.

(3) The authorised fund manager or the UK UCITS management company must retain the records referred to in COLL 6.13.2 R and COLL 6.13.3 R in a medium that allows the storage of information in a way accessible for future reference by the FCA, and in such a form and manner that the following conditions are met:

(a) the FCA must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;

(b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained; and

(c) it must not be possible for the records to be otherwise manipulated or altered.

[Note: article 16 of the UCITS implementing Directive]

Electronic data processing

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order, in order to be able to comply with COLL 6.13.2 R (Recording of portfolio transactions) and COLL 6.13.3 R (Recording of subscription and redemption orders).

[Note: article 7(1) of the UCITS implementing Directive]

An authorised fund manager of a UCITS scheme or a UK UCITS management company of an EEA UCITS scheme must ensure a high level of security during the electronic data processing referred to in COLL 6.13.5 R as well as the integrity and confidentiality of the recorded information, as appropriate.

[Note: article 7(2) of the UCITS implementing Directive]
Particulars of the standard agreement between an EEA UCITS management company and a depositary

FCA

This table belongs to COLL 6.6.4 R (7)(b) (General duties of the depositary) on the conclusion and prescribed minimum content of a standard agreement between an EEA UCITS management company (which is an authorised fund manager of a UCITS scheme) and the depositary of that scheme.

Contents of the standard agreement

(1) Provisions related to the procedures to be followed by the parties to the agreement:
   (a) a description of the procedures, included those relating to the safekeeping, to be adopted for each type of asset of the UCITS scheme that is entrusted to the depositary;
   (b) a description of the procedures to be followed where the authorised fund manager envisages a modification of the instrument constituting the scheme or the prospectus of the UCITS scheme, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;
   (c) a description of the means and procedures by which the depositary will transmit to the authorised fund manager all relevant information that the authorised fund manager needs to perform its duties, including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the authorised fund manager and the UCITS scheme to have timely and accurate access to information relating to the accounts of the UCITS scheme;
   (d) a description of the means and procedures by which the depositary will have access to all relevant information it needs to perform its duties;
   (e) a description of the procedures by which the depositary has the ability to enquire into the conduct of the authorised fund manager and to assess the quality of information transmitted, including by way of on-site visits; and
   (f) a description of the procedures by which the authorised fund manager can review the performance of the depositary in respect of the depositary’s contractual obligations.

[Note: article 30 of the UCITS implementing Directive]

(2) Provisions related to the exchange of information and to obligations on confidentiality and money laundering:
   (a) a list of all the information that needs to be exchanged between the UCITS scheme, its authorised fund manager and depositary related to the issue, cancellation, sale and redemption of units of the UCITS scheme;
Contents of the standard agreement

(b) the confidentiality obligations applicable to the parties to the agreement. These obligations must be drawn up so as not to impair the ability of either the FCA or the Home State regulator of the EEA UCITS management company to gain access to relevant documents and information; and

(c) information on the duties and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.

[Note: article 31 of the UCITS implementing Directive]

(3) Provisions related to the appointment of third parties:

In cases where the parties to the agreement envisage the appointment of third parties to carry out their duties, the following provisions:

(a) an undertaking by both parties to provide details, on a regular basis, of any third parties appointed by the depositary or the authorised fund manager to carry out their respective duties;

(b) an undertaking that on request by one of the parties, the other will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party; and

(c) a statement that a depositary's liability as referred to at COLL 6.6.15 R (Committees and delegation) will not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping.

[Note: article 32 of the UCITS implementing Directive]

(4) Provisions related to potential amendments and the termination of the agreement:

(a) the period of validity of the agreement;

(b) the conditions under which the agreement may be amended or terminated; and

(c) conditions which are necessary to facilitate transition to another depositary and, in the event of that transition, the procedure by which the depositary should send all relevant information to the other depositary.

[Note: article 33 of the UCITS implementing Directive]

(5) Applicable law:

A provision specifying that the law of the United Kingdom applies to the agreement.

[Note: article 34 of the UCITS implementing Directive]

(6) Electronic transmission of information:

In cases where the parties to the agreement agree to the use of electronic transmission for part or all of the information that is to flow between them, a provision ensuring that a record is kept of that information.

[Note: article 35 of the UCITS implementing Directive]

(7) Scope of the agreement:

Where the agreement is to cover more than one UCITS scheme managed by the authorised fund manager, a provision listing the UCITS schemes covered by the agreement.
Contents of the standard agreement

<table>
<thead>
<tr>
<th>(8)</th>
<th>Service level agreement:</th>
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<tbody>
<tr>
<td></td>
<td>The parties to the agreement may include either in the agreement or in a separate written agreement the details of the means and procedures referred to in (1)(c) and (d).</td>
</tr>
</tbody>
</table>

[Note: article 36 last sentence of the UCITS implementing Directive]

[Note: article 37 of the UCITS implementing Directive]
Chapter 7

Suspension of dealings and termination of authorised funds
7.1 Introduction

Application

(1) This chapter applies to an ICVC, an ACD, any other director of an ICVC, a depositary of an ICVC, a manager of an AUT and a trustee of an AUT, where such AUT or ICVC is a UCITS scheme or a non-UCITS retail scheme in accordance with COLL 7.1.2 R (Table of application).

(2) COLL 7.7 (UCITS mergers) applies only to a domestic UCITS merger or a cross-border UCITS merger.

Table of application

This table belongs to COLL 7.1.1 R.

<table>
<thead>
<tr>
<th>Rule</th>
<th>ICVC</th>
<th>ACD</th>
<th>Any other directors of an ICVC</th>
<th>Depositary of an ICVC</th>
<th>Manager of an ICVC</th>
<th>Trustee</th>
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<tr>
<td>7.1.1</td>
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<td>7.3.9</td>
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Purpose

(1) This chapter helps to achieve the statutory objective of protecting investors by ensuring they do not buy or redeem units at a price that cannot be calculated accurately. For instance, due to unforeseen circumstances, it may be impossible to value, or to dispose of and obtain payment for, all or some of the scheme property of an authorised fund or sub-fund. COLL 7.2.1 R(Requirement) sets out the circumstances in which an authorised fund manager must or may suspend dealings in units and the manner in which a suspension takes effect.

(2) This chapter also helps with the statutory objective of protecting consumers, by providing a cost effective and fair means of winding up authorised funds and terminating sub-funds of ICVCs and AUTs. EG 14 (Collective investment schemes) deals with the FCA’s powers to revoke the authorisation of authorised funds otherwise than by consent.
7.2 Suspension and restart of dealings

**Requirement**

(1) The authorised fund manager may, with the prior agreement of the depositary, and must without delay, if the depositary so requires, temporarily suspend the issue, cancellation, sale and redemption of units in an authorised fund (referred to in this chapter as "dealings in units"), where due to exceptional circumstances it is in the interest of all the unitholders in the authorised fund.

(1A) The authorised fund manager and the depositary must ensure that the suspension is only allowed to continue for as long as it is justified having regard to the interests of the unitholders.

(2) On suspension, the authorised fund manager, or the depositary if it has required the authorised fund manager to suspend dealings in units, must:

(a) immediately inform the FCA, stating the reason for its action; and

(b) as soon as practicable give written confirmation of the suspension and the reasons for it to:

(i) the FCA; and

(ii) the Home State regulator in each EEA State in which the authorised fund manager holds itself out as willing to sell or redeem units of the authorised fund concerned.

(2A) The authorised fund manager must ensure that a notification of the suspension is made to unitholders of the authorised fund as soon as practicable after suspension commences.

(2B) In making the notification set out in (2A), the authorised fund manager must ensure that it:

(a) draws unitholders' particular attention to the exceptional circumstance which resulted in the suspension;
(b) is clear, fair and not misleading; and
(c) informs unitholders how to obtain the information detailed in (2C).

☐ The authorised fund manager must ensure that it publishes (on its website or by other general means) sufficient details to keep unitholders appropriately informed about the suspension including, if known, its likely duration.

(3) During a suspension:

(a) none of the obligations in COLL 6.2 (Dealing) apply; and
(b) the authorised fund manager must comply with as much of COLL 6.3 (Valuation and pricing) as is practicable in the light of the suspension.

(4) The suspension of dealings in units must cease as soon as practicable after the exceptional circumstances referred to in (1) have ceased.

(4A) The authorised fund manager and the depositary must formally review the suspension at least every 28 days and inform the FCA of the results of this review and any change to the information provided in (2).

(5) The authorised fund manager must inform the FCA of the proposed restart of dealings in units and immediately after the restart must confirm this by giving notice to the FCA and the authorities mentioned in (2)(b)(ii).

(6) The authorised fund manager may agree, during the suspension, to deal in units in which case all deals accepted during, and outstanding prior to, the suspension will be undertaken at a price calculated at the first valuation point after restart of dealing in units, subject to (8).

(7) This rule applies to a sub-fund as it applies to an authorised fund, and:

(a) references to the units of the class or classes relate to that sub-fund and to the scheme property attributable to the sub-fund; and
(b) this rule can only apply to one or more classes of units without being applied to other classes, if it is in the interest of all the unitholders.
(8) If an authorised fund operates limited redemption arrangements, and the event in (1) has affected a valuation point, the authorised fund manager must declare an additional valuation point as soon as possible after the restart of dealings in units.

[Note: article 45(2) of the UCITS Directive]

Temporary suspension of units of a master UCITS or qualifying master scheme

Where:

(1) an authorised fund manager of a UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale and redemption of its units, whether at its own initiative or at the request of the FCA; or

(2) an operator of an EEA UCITS scheme which is a master UCITS or a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of its Home State regulator; or

(3) an authorised fund manager of a non-UCITS retail scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units, whether at its own initiative or at the request of the FCA; or

(4) the operator of a recognised scheme which is a qualifying master scheme temporarily suspends the issue, cancellation, sale or redemption of its units whether at its own initiative or at the request of its regulator;

the authorised fund manager of each of its feeder UCITS (which is a UCITS scheme) or feeder NURS is entitled to suspend the issue, cancellation, sale or redemption of its units for the same period of time as the master UCITS or qualifying master scheme.

[Note: article 60(3) of the UCITS Directive]

Guidance

(1) Suspension should be allowed only in exceptional cases where circumstances so require and suspension is justified having regard to the interests of the unitholders. Difficulties in realising scheme assets or temporary shortfalls in liquidity may not on their own be sufficient justification for suspension. In such circumstances the authorised fund manager and depositary would need to be confident that suspension could be demonstrated genuinely to be in the best interests of the unitholders. Before an authorised fund manager and depositary determines that it is the best interests of unitholders to suspend dealing, it should ensure that any alternative courses of action have been discounted.
(2) The authorised fund manager will need to ensure that any suspension, while maintaining unitholders’ interests, is temporary, of minimal duration and is consistent with the provisions of the prospectus and the instrument constituting the scheme.

(3) During a suspension, the authorised fund manager should inform any person who requests a sale or redemption of units that all dealings in units have been suspended and that that person has the option to withdraw the request during the period of suspension or have the request executed at the first opportunity after the suspension ends.
7.3 Winding up a solvent ICVC and terminating or winding up a sub-fund of an ICVC

Explanation of COLL 7.3

(1) The winding up of an ICVC may be carried out under this section instead of by the court provided the ICVC is solvent and the steps required under regulation 21 of the OEIC Regulations (The Authority’s approval for certain changes in respect of a company) are fulfilled. This section lays down the procedures to be followed and the obligations of the ACD and any other directors of the ICVC.

(2) The termination of a sub-fund may be carried out under this section, instead of by the court, provided the sub-fund is solvent and the steps required under regulation 21 of the OEIC Regulations are complied with. Termination can only commence once the proposed alterations to the ICVC’s instrument of incorporation and prospectus have been notified to the FCA and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(3) A sub-fund or ICVC may also be terminated or wound up in connection with a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

(4) COLL 7.3.3 G gives an overview of the main steps in winding up a solvent ICVC or terminating a sub-fund under FCA rules, assuming FCA approval.

Special meanings for termination of a sub-fund of an ICVC

In this section, where a sub-fund of an ICVC is being terminated, references to:

(1) units, are references to units of the class or classes related to the sub-fund to be terminated;

(2) a resolution, or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);

(3) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
(4) liabilities, are references to liabilities of the ICVC allocated or attributable to the sub-fund to be terminated.

Guidance on winding up or termination

This table belongs to COLL 7.3.1 G (4) (Explanation of COLL 7.3)

Summary of the main steps in winding up a solvent ICVC or terminating a sub-fund under FCA rules, assuming FCA approval.

Notes: N = Notice to be given to the FCA under regulation 21 of OEIC Regulations

E = commencement of winding up or termination

W/U = winding up

FAP = final accounting period (COLL 7.3.8 R(4))

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Commence preparation of solvency statement</td>
<td>N-28 days</td>
<td>7.3.5 (2)</td>
</tr>
<tr>
<td>2</td>
<td>Send audited solvency statement to the FCA with copy to depositary</td>
<td>By N + 21 days</td>
<td>7.3.5 (4) and (5)</td>
</tr>
<tr>
<td>3</td>
<td>Receive the FCA approval</td>
<td>N + one month</td>
<td>Regulation 21 of OEIC Regulations</td>
</tr>
<tr>
<td>4</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
<td>7.3.6</td>
</tr>
<tr>
<td>5</td>
<td>Realise proceeds, wind up, instruct depositary accordingly</td>
<td>ASAP after E</td>
<td>7.3.7</td>
</tr>
<tr>
<td>6</td>
<td>Prepare final account or termination account &amp; have account audited</td>
<td>On completion of W/U</td>
<td>7.3.8</td>
</tr>
<tr>
<td>7</td>
<td>Send final account or termination account and auditor's report to the FCA &amp; unitholders</td>
<td>Within 4 months of FAP</td>
<td>7.3.8(6)</td>
</tr>
<tr>
<td>8</td>
<td>Request FCA to revoke relevant authorisation order or update its records</td>
<td>On completion of W/U</td>
<td>7.3.7(9)</td>
</tr>
</tbody>
</table>

When an ICVC is to be wound up or a sub-fund terminated or wound up

(1) An ICVC must not be wound up except:

(a) under this section; or
(b) as an unregistered company under Part V of the Insolvency Act 1986.

(1A) A sub-fund must not:

(a) be terminated except under this section; or

(b) wound up except under Part V of the Insolvency Act 1986 (as modified by regulation 33C of the OEIC Regulations) as an unregistered company.

(2) An ICVC must not be wound up or a sub-fund terminated under this section if there is a vacancy in the position of ACD.

(3) An ICVC must not be wound up or a sub-fund terminated under this section:

(a) unless and until effect may be given, under regulation 21 of the OEIC Regulations, to proposals to wind up the affairs of the ICVC or to proposals to make the alterations to the ICVC’s instrument of incorporation and prospectus that will be required if a sub-fund is terminated; and

(b) unless a statement has been prepared and sent or delivered to the FCA under COLL 7.3.5 R (Solvency statement) and received by the FCA prior to satisfaction of the condition in (a).

(4) Subject to (3) and the subsequent provisions of this section, the appropriate steps to wind up an ICVC or terminate a sub-fund under this section must be taken:

(a) if an extraordinary resolution to that effect is passed; or

(b) when the period (if any) fixed for the duration of the ICVC or the sub-fund by the instrument of incorporation expires or any event occurs, for which the instrument of incorporation provides that the ICVC or the sub-fund is to be wound up or terminated; or

(c) on the date stated in any agreement by the FCA in response to a request from the directors for the winding up of the ICVC or a request for the termination of the sub-fund; or

(d) on the effective date of a duly approved scheme of arrangement which is to result in the ICVC ceasing to hold any scheme property; or

(e) in the case of a sub-fund, on the effective date of a duly approved scheme of arrangement which is to result in the sub-fund ceasing to hold any scheme property; or
(f) in the case of an ICVC that is an umbrella, on the date on which all of its sub-funds fall within (e) or have otherwise ceased to hold any scheme property, notwithstanding that the ICVC may have assets and liabilities that are not attributable to any particular sub-fund.

**Solvency statement**

(1) Before notice is given to the FCA under regulation 21 of the OEIC Regulations of the proposals referred to in COLL 7.3.4 R (3), the directors must make a full enquiry into the ICVC’s or, in the case of termination of a sub-fund, the sub-fund’s affairs, business and property to determine whether the ICVC or the sub-fund will be able to meet all its liabilities.

(2) The ACD must then, based on the results of this enquiry, prepare a statement either:

(a) confirming that the ICVC or the sub-fund will be able to meet all its liabilities within twelve months of the date of the statement; or

(b) stating that such confirmation cannot be given.

(3) This solvency statement must:

(a) relate to the ICVC’s or the sub-fund’s affairs, business and property at a date no more than 28 days before the date on which notice is given to the FCA;

(b) if there is more than one director, be approved by the board of directors and signed on their behalf by the ACD; and

(c) if it contains the confirmation under (2)(a), be signed by at least one other director or, if there is no director other than the ACD, be signed by the ACD.

(4) A statement which contains the confirmation under (2)(a) must annex a statement signed by the auditor appointed under Schedule 5 to the OEIC Regulations (Auditors) to the effect that, in his opinion, the enquiry required by (1) has been properly made and is fairly reflected by the confirmation.

(5) The solvency statement must be sent or delivered to the FCA and the depositary no later than 21 days after notice is given to the FCA in accordance with regulation 21 of the OEIC Regulations.

**Consequences of commencement of winding up or termination**

(1) Winding up or termination must commence once the conditions referred to in COLL 7.3.4 R (3) are both satisfied or, if later, once the events in COLL 7.3.4 R (4) have occurred.
(2) Once winding up or termination has commenced:

(a) ☐ COLL 6.2 (Dealing), ☐ COLL 6.3 (Valuation and pricing) and ☐ COLL 5 (Investment and borrowing powers) cease to apply to the ICVC or to the units and scheme property in the case of a sub-fund;

(b) the ICVC must cease to issue and cancel units, except in respect of the final cancellation under ☐ COLL 7.3.7 R (5);

(c) the ACD must cease to sell or redeem units or to arrange for the issue or cancellation of units, except in respect of the final cancellation under ☐ COLL 7.3.7 R (5);

(d) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the sanction of the directors;

(e) where winding up an ICVC, the ICVC must cease to carry on its business, except for its beneficial winding up; and

(f) the corporate status and corporate powers of the ICVC and (subject to the preceding provisions of this rule) the powers of the directors continue until the ICVC is dissolved.

(3) If the ACD has not previously notified unitholders of the proposal to wind up the ICVC or terminate the sub-fund, the ACD must, as soon as practicable after winding up or termination has commenced, give written notice of the commencement of the winding up or termination to the unitholders.

Manner of winding up or termination

(2) The ACD must, as soon as practicable after winding up or termination has commenced, cause the scheme property to be realised and the liabilities of the ICVC or the sub-fund to be met out of the proceeds.

(3) The ACD must instruct the depositary how such proceeds (until utilised to meet liabilities or make distributions to unitholders) must be held and those instructions must be prepared with a view to the prudent protection of creditors and unitholders against loss.

(4) Where sufficient liquid funds are available after making adequate provision for the expenses of the winding up or termination and the discharge of the ICVC’s or the sub-fund’s remaining liabilities, the ACD may arrange for the depositary to make one or more interim distributions to the unitholders proportionately.
(5) On or before the date on which the final account is sent to unitholders in accordance with COLL 7.3.8 R (Final account and termination account), the ACD must arrange for all units in issue to be cancelled and for the depositary to make a final distribution to the unitholders, in the same proportions as provided by (4), of the balance remaining (net of a provision for any further expenses of the ICVC or sub-fund).

(6) Paragraphs (2) to (5) are subject to the terms of any scheme of arrangement sanctioned by an extraordinary resolution passed on or before the commencement of the winding up or termination.

(7) Where the ICVC and one or more unitholders (other than the ACD) agree, the requirement in (2) to realise the scheme property does not apply to that part of the scheme property which is proportionate to the right to participate in scheme property of that or those unitholders.

(8) In the case of (7), the ACD must cause the ICVC to distribute that part of the scheme property in specie to that or those unitholders in proportion to their respective rights to participate, this distribution being effected after making adjustments and retaining such provision as appears to the ACD appropriate to ensure that those unitholders bear the proportion of the liabilities and the expenses of the distribution attributable to their units.

(9) The depositary must notify the FCA once the winding up of the ICVC or the termination of a sub-fund (including compliance with COLL 7.3.8 R is complete and at the same time the ACD or the depositary must request the FCA to revoke the relevant authorisation order (on the winding up of an ICVC) or to update its records (on the termination of a sub-fund of an ICVC).

(10) Where any sum of money stands to the account of the ICVC at the date of its dissolution or a sub-fund at the date of its termination, the ACD must arrange for the depositary to pay or lodge that sum within one month after that date in accordance with regulation 33(4) or (5) of the OEIC Regulations (Dissolution in other circumstances).

(11) [deleted]

(12) [deleted]

(13) [deleted]
For the purposes of this section an ICVC may be treated as having been wound up or a sub-fund terminated upon completion, where relevant, of all of the steps in (1) to (3):

1. payment or adequate provision being made (by the ACD) to cover the expenses relating to the winding up or termination and all liabilities of the scheme;

2. the scheme property being realised or distributed in accordance with COLL 7.3.7 R (8); and

3. the net proceeds being distributed to the unitholders named in the register on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Final account and termination account

1. Once the ICVC’s affairs are wound up or termination of the sub-fund has been completed (including distribution or provision for distribution in accordance with COLL 7.3.7 R (5)), the ACD must prepare an account of the winding up or termination showing:
   - how it has been conducted; and
   - how the scheme property has been disposed of.

2. The account in (1) must be, if there is:
   - more than one director, approved by the board of directors and be signed on their behalf by the ACD and at least one other director; or
   - no director other than the ACD, signed by the ACD.

3. Once signed, this account is the "final account" for the purposes of the winding up of an ICVC and the "termination account" for the purposes of the termination of a sub-fund.

4. The final account must state the date on which the ICVC’s affairs were wound up and the date stated must be regarded as the final day of the accounting period of the ICVC then running (‘final accounting period’) for the purpose of COLL 4.5.

4A. The termination account must state the date on which the sub-fund’s affairs were terminated.
(5) The ACD must ensure that the ICVC’s auditor makes a report in respect of the final account or termination account, which states the auditor’s opinion whether the final account or termination account has been properly prepared for the purpose of (1).

(6) Within four months of the date of the completion of the winding up of the ICVC or termination of the sub-fund, the ACD must send a copy of the final account or termination account and the auditor’s report on it to the FCA and to each person who was a unitholder (or the first named of joint unitholders) immediately before the winding up or termination commenced.

**Duty to ascertain liabilities**

(1) The ACD must use all reasonable endeavours to ensure that all the liabilities of the ICVC or the sub-fund are discharged before the completion of the winding up or termination.

(2) The duty in (1) relates to all liabilities of which the ACD:

(a) is, or becomes, aware before the completion of the winding up or termination; or

(b) would have become aware before the completion of the winding up or termination had it used all reasonable endeavours to ascertain the liabilities.

(3) If the ACD rejects any claim against the ICVC or the sub-fund in whole or part or against the ICVC or the sub-fund in respect of a liability in whole or part, the ACD must immediately send to the claimant written notice of its reasons for doing so.

**Reports and accounts**

(1) The ACD need not (as would be required under COLL 4.5.13 R (Provision of short report)) prepare a short report relating to an annual accounting period or half-yearly accounting period which begins after commencement of winding up or termination, if the directors of the ICVC, after consulting the depositary, have reasonably determined that this is not required in the interests of unitholders.

(1A) The ACD must consult with the depositary before determining that a short report is not required in the interests of unitholders.

(2) Where (1) applies, a copy of the long report must be supplied free of charge to any unitholder upon request.

(3) Where (1) applies, the ACD must ensure that it keeps unitholders appropriately informed about the winding up or termination including, if known, its likely duration.
(4) The ACD must send a copy of the information required by (3) to each person who was a unitholder or the first named of joint unitholders immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with COLL 7.3.7 R (5).

(1) The effect of COLL 7.3.10 R (1), if exercised by the directors of the ICVC, is that the ACD must continue to prepare annual and half-annual long reports and to make them available to unitholders in accordance with COLL 4.5.14 R.

(2) Where there are outstanding unrealised assets, keeping unitholders appropriately informed may, for example, be carried out by providing updates at six-monthly or more frequent intervals.

**Liabilities of the ACD**

(1) Except to the extent that the ACD can show that it has complied with COLL 7.3.9 R (Duty to ascertain liabilities), the ACD is personally liable to meet any liability of an ICVC or a sub-fund, of which it is the ACD, wound up or terminated under this section (whether or not the ICVC has been dissolved or, in the case of the sub-fund, termination has been completed) that was not discharged before the completion of the winding up or termination.

(2) Where winding up an ICVC, if the proceeds of the realisation of the assets attributable, or allocated to a particular sub-fund of an umbrella ICVC are insufficient to meet the liabilities attributable or allocated to that sub-fund, the ACD must pay to the ICVC, for the account of that sub-fund the amount of the deficit, unless and to the extent that the ACD can show that the deficit did not arise as a result of any failure by the ACD to comply with the rules in COLL.

(3) The liabilities of the ACD under this rule create a debt (in England and Wales in the nature of a specialty) accruing due from it on the completion of the winding up or termination and payable upon the demand of the creditor in question (including the ICVC in the circumstances described in (2)).

(4) The obligations of the ACD under this rule do not affect any other obligation of the ACD under these rules or the general law.

**Miscellaneous**

(1) If:
(a) during the course, or as a result, of the enquiry referred to in COLL 7.3.5 R (1) (Solvency statement), the directors become of the opinion that it will not be possible to provide the confirmation referred to in (2)(a) of that rule; or

(b) after winding up or termination has commenced, the ACD becomes of the opinion that the ICVC or the sub-fund will be unable to meet all its liabilities within twelve months of the date of the statement provided under (a) of COLL 7.3.5 R (2);

the directors must immediately present a petition or cause the ICVC or sub-fund to present a petition for the winding up of the ICVC or sub-fund as an unregistered company under Part V of the Insolvency Act 1986.

(2) If, after the commencement of a winding up or termination under this chapter and before notice of completion of the winding up or termination has been sent to the FCA, there is a vacancy in the position of ACD:

(a) the directors of the ICVC must immediately present or cause the ICVC or sub-fund to present; or

(b) if there are no directors, the depositary must immediately present;

a petition for the winding up of the ICVC or sub-fund as an unregistered company under Part V of the Insolvency Act 1986.
7.4 Winding up an AUT and terminating a sub-fund of an AUT

Explanation of COLL 7.4

(1) This section deals with the circumstances and manner in which an AUT is to be wound up or a sub-fund of an AUT is to be terminated. Under section 256 of the Act (Requests for revocation of authorisation order), the manager or trustee of an AUT may request the FCA to revoke the authorisation order in respect of that AUT. Section 257 of the Act (Directions) gives the FCA the power to make certain directions.

(2) The termination of a sub-fund under this section will be subject to section 251 of the Act (Alteration of schemes and changes of manager or trustee). Termination can only commence once the proposed alterations to the trust deed and prospectus have been notified to the FCA in writing and permitted to take effect. On termination, the assets of the sub-fund will normally be realised, and the unitholders in the sub-fund will receive their respective share of the proceeds net of liabilities and the expenses of the termination.

(3) An AUT or a sub-fund of an AUT may also be wound up or terminated in connection with a scheme of arrangement. Unitholders will become entitled to receive units in another regulated collective investment scheme in exchange for their units.

(4) COLL 7.4.2A G gives an overview of the main steps in winding up an AUT or terminating a sub-fund under FCA rules, assuming FCA approval.

Special meanings for termination of a sub-fund of an AUT

In this section, where a sub-fund of an AUT is being terminated, references to:

(1) units, are references to units of the class or classes related to the sub-fund to be terminated;

(2) a resolution or extraordinary resolution, are references to such a resolution passed at a meeting of unitholders of units of the class or classes referred to in (1);

(3) scheme property, are references to the scheme property allocated or attributable to the sub-fund to be terminated; and
(4) liabilities, are references to liabilities of the *AUT* allocated or attributable to the *sub-fund* to be terminated.

**Guidance on winding up or termination**

This table belongs to ■ COLL 7.4.1 G (4) (Explanation of COLL 7.4)

Summary of the main steps in winding up an *AUT* or terminating a *sub-fund* under *FCA* rules

Notes: N = Notice to be given to the *FCA* under section 251 of the *Act.*

<table>
<thead>
<tr>
<th>Step number</th>
<th>Explanation</th>
<th>When</th>
<th>COLL rule (unless stated otherwise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Receive <em>FCA</em> approval</td>
<td>N + one month</td>
<td>Section 251 of the <em>Act</em></td>
</tr>
<tr>
<td></td>
<td></td>
<td>On receipt of notice from the <em>FCA</em></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Normal business ceases; notify unitholders</td>
<td>E</td>
<td>7.4.3R</td>
</tr>
<tr>
<td>3</td>
<td><em>Trustee</em> to realise and distribute proceeds</td>
<td>ASAP after E</td>
<td>7.4.4R(1) to (5)</td>
</tr>
<tr>
<td>4</td>
<td>Send annual long report of <em>manager</em> and <em>trustee</em> to the <em>FCA</em></td>
<td>Within 4 months of FAP</td>
<td>7.4.5R(5)</td>
</tr>
<tr>
<td>5</td>
<td>Request <em>FCA</em> to revoke relevant authorisation order</td>
<td>On completion of W/U</td>
<td>7.4.4R(6)</td>
</tr>
</tbody>
</table>

When an *AUT* is to be wound up or a *sub-fund* terminated

(1) Upon the happening of any of the events or dates referred to in (2) and not otherwise:

(a) ■ COLL 6.2 (Dealing), ■ COLL 6.3 (Valuation and pricing) and ■ COLL 5 (Investment and borrowing powers) cease to apply to the *AUT* or to the *units* and *scheme property* in the case of a *sub-fund*;

(b) the *trustee* must cease to issue and cancel *units*, except in respect of the final *cancellation* under ■ COLL 7.4.4 R (1) or ■ (2);

(c) the *manager* must cease to sell and redeem *units*;
(d) the manager must cease to arrange the issue or cancellation of units under COLL 6.2.7 R (Issue and cancellation of units through an authorised fund manager), except in respect of the final cancellation under COLL 7.4.4 R (1) or (2);

(dA) no transfer of a unit may be registered and no other change to the register of unitholders may be made without the approval of the person responsible for the register in accordance with COLL 6.4.4 R (1); and

(e) the trustee must proceed to wind up the AUT or terminate the sub-fund in accordance with COLL 7.4.4 R.

(1A) If the manager has not previously notified unitholders of the proposal to wind up the AUT or terminate the sub-fund, it must as soon as practicable after winding up or termination has commenced give written notice of the commencement of the winding up or termination to the unitholders.

(2) The events referred to in (1) are:

(a) the authorisation order of the AUT is revoked;

(b) alterations to the AUT's trust deed and prospectus that will be required if the sub-fund is terminated taking effect in accordance with section 251 of the Act;

(c) the passing of an extraordinary resolution winding up the AUT or terminating the sub-fund, provided FCA's prior consent to the resolution has been obtained by the manager or trustee;

(d) in response to a request to the FCA by the manager or the trustee for the revocation of the authorisation order, the FCA has agreed, subject to there being no material change in any relevant factor, that, on the conclusion of the winding up of the AUT, the FCA will agree to that request;

(e) the expiration of any period specified in the trust deed as the period at the end of which the AUT is to be wound up or the sub-fund is to terminate;

(f) the effective date of a duly approved scheme of arrangement, which is to result in the AUT or sub-fund that is subject to the scheme of arrangement being left with no property; or

(g) the date on which a relevant pension scheme is notified in writing by the Occupational Pensions Schemes Regulatory Authority that the scheme is no longer registered under the Welfare and Pensions Reform Act 1999 as a stakeholder pension scheme.
Manner of winding up or termination

(1) Where COLL 7.4.3 R (2)(f) applies, the trustee must cancel all units in issue and wind up the AUT or terminate the sub-fund in accordance with the approved scheme of arrangement.

(2) In any other case falling within COLL 7.4.3 R:

(a) once the AUT falls to be wound up or sub-fund terminated, the trustee must realise the scheme property;

(b) after paying out or retaining adequate provision for all liabilities payable and for the costs of the winding up or termination, the trustee must cancel all units in issue and distribute the proceeds of that realisation to the unitholders and the manager proportionately to their respective interests in the AUT or sub-fund as at the date, or the date of the relevant event referred to in COLL 7.4.3 R; and

(c) any unclaimed net proceeds or other cash (including unclaimed distribution payments) held by the trustee after one year from the date on which they became payable must be paid by the trustee into court (or, in Scotland, as the court may direct), subject to the trustee having a right to retain any expenses properly incurred by him relating to that payment.

(3) For an AUT which is a relevant pension scheme, payments must not be made to unitholders in the AUT, the realisation proceeds having to be paid by the trustee in accordance with the trust deed.

(4) Where the trustee and one or more unitholders agree, the requirement in (2) to realise the scheme property does not apply to that part of the property proportionate to the entitlement of that or those unitholders.

(5) The trustee must distribute the part of the scheme property referred to in (4) in the form of property, after making adjustments or retaining provisions as appears appropriate to the trustee for ensuring that, that or those unitholders bear a proportional share of the liabilities and costs.

(6) On completion of the winding up in respect of the events referred to in COLL 7.4.3 R (2)(c), COLL 7.4.3 R (2)(d), COLL 7.4.3 R (2)(e) or COLL 7.4.3 R (2)(f), the trustee must notify the FCA in writing and at the same time the manager or trustee must request the FCA to revoke the relevant authorisation order.
For the purposes of this section, an AUT may be treated as having been wound up or a sub-fund terminated upon completion, where relevant, of all of the steps in (1) to (3):

1. Payment or adequate provision being made (by the trustee after consulting the manager) to cover the expenses relating to the winding up or termination and all liabilities of the scheme;

2. The scheme property being realised or distributed in accordance with COLL 7.4.4 R (5); and

3. The net proceeds being distributed to the unitholders named in the register on the date on which winding up or termination commenced, or provision being made in respect of the final distribution.

Accounting and reports during winding up or termination

1. For any annual or half-yearly accounting period which begins after commencement of the winding up or termination, the manager is not required to prepare a short report (COLL 4.5.13 R (Provision of short report)), provided that it has reasonably determined that the report is not required in the interests of the unitholders.

1A. The manager must consult the trustee before determining that a short report is not required in the interests of unitholders.

2. Where (1) applies, a copy of the long report must be supplied free of charge to any unitholder upon request.

2A. Where (1) applies, the manager must ensure that it keeps unitholders appropriately informed about the winding up or termination, including its likely duration.

2B. The manager must send a copy of the information required by COLL 7.4.5 R (2A) to each person who was a unitholder or the first named of joint unitholders immediately before the winding up or termination commenced, unless a final distribution has been made in accordance with COLL 7.4.4 R (2)(b).

3. [deleted]

4. At the conclusion of the winding up or termination, the accounting period then running is regarded as the final annual accounting period.

5. Within four months after the end of the final annual accounting period or the termination of the sub-fund, the annual reports of the manager and trustee must be published and sent to the FCA.
(6) The manager must, on publication of the annual long report in (5), write to each person who was a unitholder or the first named of joint unitholders immediately before the commencement of winding up or termination to inform them that the annual long report is available free-of-charge on request.

(1) The effect of COLL 7.4.5 R (1), if exercised by the manager and trustee, is that the manager must continue to prepare annual and half-yearly long reports and to make them available to unitholders in accordance with COLL 4.5.14 R.

(2) Where there are outstanding unrealised assets, keeping unitholders appropriately informed may, for example, be carried out by providing updates to unitholders at six-monthly or more frequent intervals.
7.5 Schemes or sub-funds that are not commercially viable

Explanation of this section

(1) The FCA expects that the majority of requests it will receive for the winding up of an authorised fund (under regulation 21(1) of the OEIC Regulations or under section 256 of the Act) or termination of a sub-fund will be from authorised fund managers and depositaries who consider that the AUT, ICVC or sub-fund in question is no longer commercially viable.

(2) It is in consumers’ interests to minimise, as far as possible, the period between which the FCA receives such requests and responds to them. To assist the FCA in arriving at a quick decision, based on all the relevant factors, it would be helpful for the FCA to receive the information listed at ■ COLL 7.5.2 G. Further information, however, may be requested by the FCA after receipt of the information, depending on the individual circumstances of the case.

Information to be provided to the FCA

The information referred to in ■ COLL 7.5.1 G is listed below:

(1) the name of the authorised fund or sub-fund;
(2) the size of the authorised fund or sub-fund;
(3) the number of unitholders;
(4) whether dealing in units has been suspended;
(5) why the request is being made;
(6) what consideration has been given to the authorised fund or sub-fund entering into a scheme of arrangement with another regulated collective investment scheme and the reasons why a scheme of arrangement is not feasible;
(7) (a) whether unitholders have been informed of the intention to seek termination, winding up or revocation; and
(b) if not, when they will be informed;
(8) details of any proposed preferential switching rights offered or to be offered to unitholders;
(9) details of any proposed rebate of charges to be made to unitholders who recently purchased units;

(10) where the costs of winding up or termination will fall;

(11) the depositary’s:

   (a) statement whether having taken reasonable care it is certain that a scheme of arrangement is not feasible and explaining what steps have been considered that would result in the authorised fund or sub-fund not needing to wind up or terminate (for example, appointing a replacement authorised fund manager); and

   (b) confirmation that it will not or does not expect to qualify a report made in accordance with COLL 4.5.11 R (Report of the depositary);

(12) the preferred date for the FCA’s determination to revoke authorisation or the date for the commencement of the winding up or termination; and

(13) any additional information or material considered to be relevant to the FCA’s decision under sections 251 and 256 of the Act or regulation 21 of the OEIC Regulations (as appropriate).
7.6 Schemes of arrangement

Schemes of arrangement: explanation

(1) A proposal that an authorised fund should be involved in a scheme of arrangement is subject to written notice to and approval by the FCA under section 251 of the Act (Alteration of schemes and changes of manager or trustee) or regulation 21 of the OEIC Regulations (The Authority's approval for certain changes in respect of a company). Effect cannot be given to such a change except in accordance with that section or regulation.

(2) The issue of units in exchange for assets as part of an approved scheme of arrangement is subject to:

- COLL 6.2.5 R and COLL 6.2.6 R (Issue and cancellation of units);
- COLL 6.2.15 R (In specie issue and redemption); and
- COLL 7.6.2 R (Scheme of arrangement: requirements).

(3) COLL 7.6.2 R (3) to R (6) apply to a domestic UCITS merger and cross-border UCITS merger. Arrangements constituting any such merger are in addition subject to the requirements of COLL 7.7 (UCITS mergers), implementing the requirements of the UCITS Directive.

Schemes of arrangement: requirements

(1) If a scheme of arrangement is entered into in relation to an authorised fund ("transferor fund") or a sub-fund of a scheme which is an umbrella ("transferor sub-fund"), an authorised fund manager must ensure that the unitholders of the transferor fund or sub-fund do not become unitholders of units in a collective investment scheme other than a regulated collective investment scheme.

(2) For a UCITS scheme or a sub-fund of a UCITS scheme, (1) applies as if the reference to a regulated collective investment scheme also excludes any recognised scheme other than a scheme recognised under section 264 of the Act (Schemes constituted in other EEA States).
(3) Where, for the purpose of a scheme of arrangement, it is proposed that scheme property of an authorised fund should become the property of another regulated collective investment scheme or sub-fund of a regulated collective investment scheme, the proposal must not be implemented without the sanction of an extraordinary resolution of the unitholders in the authorised fund, unless (4) applies.

(4) Where, for the purposes of a scheme of arrangement, it is proposed that scheme property attributable to a sub-fund of an umbrella should become the property of another regulated collective investment scheme or of another sub-fund of a regulated collective investment scheme (whether or not of that umbrella), the proposal must not be implemented without the sanction of:

(a) an extraordinary resolution of the unitholders in the sub-fund of that umbrella; and

(b) (unless implementation of the scheme of arrangement is not likely to result in any material prejudice to the interests of the unitholders in any other sub-fund of that umbrella) an extraordinary resolution of the unitholders of units in that umbrella.

(5) If it is proposed that an authorised fund or sub-fund of an umbrella should receive property (other than its first property) as a result of a scheme of arrangement (or an arrangement equivalent to a scheme of arrangement) which is entered into by some other collective investment scheme or sub-fund, or by a body corporate, the proposal must not be implemented without the sanction of an extraordinary resolution of the unitholders in the authorised fund or (as the case may be) of the class or classes of units related to the sub-fund unless (6) applies.

(6) This paragraph (6) applies if the directors of the ICVC or the manager and trustee of the AUT agree that the receipt of the property concerned for the account of the ICVC or AUT:

(a) is not likely to result in any material prejudice to the interests of the unitholders of the authorised fund;

(b) is consistent with the objectives of the authorised fund or sub-fund; and

(c) could be effected without any breach of a rule in COLL 5 (Investment and borrowing powers).
7.7 UCITS mergers

Application

This section applies to an ICVC, an authorised fund manager of an AUT or ICVC, any other director of an ICVC and the depositary of any such scheme where, in each case, the AUT or ICVC is a UCITS scheme that is a party to:

(1) a domestic UCITS merger; or

(2) a cross-border UCITS merger.

(1) The effect of COLL 7.7.1, and in particular the narrow Glossary definition of domestic UCITS merger which is drafted in accordance with article 2.1(r) of the UCITS Directive, is that this section will not apply to a merger in the United Kingdom between two or more UCITS schemes unless one of them has been the subject of a UCITS marketing notification.

(2) For arrangements to constitute a cross-border UCITS merger, at least two of the relevant UCITS must be:

(a) established in different EEA States; or

(b) established in the same EEA State and be merging into a newly constituted UCITS established in another EEA State.

References to a UCITS scheme

In this section references to:

(1) a UCITS scheme, a merging UCITS, a receiving UCITS or to an EEA UCITS scheme include the sub-fund of any such scheme;

(2) the management company of an EEA UCITS scheme are to the operator of the scheme.

[Note: article 37 of the UCITS Directive]

UCITS mergers

A domestic UCITS merger between two or more UCITS schemes, or a cross-border UCITS merger between one or more UCITS schemes which
is or are the merging UCITS and one or more EEA UCITS schemes, is permissible provided:

(1) it is effected in accordance with the requirements of:

(a) the UCITS Regulations 2011, which include the need for the FCA to have made a prior order approving the proposed merger (which may be made subject to (2)); and

(b) this chapter; and

(2) in the case of a UCITS scheme that is:

(a) a merging UCITS in a domestic or cross-border UCITS merger, an extraordinary resolution is approved by unitholders in accordance with COLL 7.6.2 R (3) and (4) (Schemes of arrangement: requirements); and

(b) a receiving UCITS in a domestic or cross-border UCITS merger, the manager and trustee of the AUT and the directors of the ICVC comply with COLL 7.6.2 R (5) and (6).

[Note: articles 39(1), 39(4) and 44 first paragraph of the UCITS Directive]

Meetings of unitholders

(1) The effect of COLL 7.7.4 R (2)(a) is that the 75% majority that is needed in support for an extraordinary resolution of unitholders to be passed is without prejudice to the presence quorum that is required by COLL 4.4.6 R (Quorum).

(2) Any meeting of unitholders that is needed to give effect to a proposed UCITS merger is subject to the requirements of COLL 4.4 (Meeting of unitholders and service of notices).

UCITS Regulations 2011

(1) The requirements and the process which must be followed to give effect to a proposal for a UCITS merger as specified by Chapter VI of the UCITS Directive (see articles 37 to 48) have been implemented in the United Kingdom by the provisions of Part 4 of the UCITS Regulations 2011. The main features of the regime as set out in those provisions include:

(a) the different types of merger operation that will be recognised for a UCITS merger;

(b) the need for the FCA to give prior approval to the proposed merger under regulation 9 (Application for authorisation) of the UCITS Regulations 2011, where the arrangements proposed constitute either:

(i) a domestic UCITS merger; or

(ii) a cross-border UCITS merger in which the merging UCITS is a UCITS scheme (a UK UCITS);

(c) the information that has to be given to the FCA in order to obtain the approval under (b);
(d) the need for draft terms of merger to be prepared;
(e) the role of the relevant depositaries and auditors;
(f) the need for appropriate and accurate information to be prepared for the benefit of unitholders;
(g) rights of redemption and suspension of dealing in units in the relevant UCITS; and
(h) the consequences of the proposed merger.

(2) Firms are advised that they do not need to seek approval from the FCA under section 251 (Alteration of schemes and changes of manager or trustee) of the Act or, as the case may be, regulation 21 (The Authority’s approval for certain changes in respect of a company) of the OEIC Regulations where they are required to obtain the prior approval of the FCA to a proposed merger under regulation 9 of the UCITS Regulations 2011.

(3) A summary of how the regime for UCITS mergers operates is to be found in COLLG.

Common draft terms of merger

(1) The authorised fund manager of a UCITS scheme that is a merging UCITS or a receiving UCITS in a proposed UCITS merger, must in conjunction with any other authorised fund manager or, as the case may be, management company of an EEA UCITS scheme that is a party to the proposed merger, draw up common draft terms of the proposed UCITS merger.

(2) The common draft terms in (1) must set out the following particulars:

(a) an identification of the type of UCITS merger and of the UCITS involved;
(b) the background to and the rationale for the proposed UCITS merger;
(c) the expected impact of the proposed UCITS merger on the unitholders of both the merging UCITS and the receiving UCITS;
(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities of the UCITS on the date for calculating the exchange ratio as referred to in regulation 13 (Consequences of a merger) of the UCITS Regulations 2011;
(e) the calculation method of the exchange ratio;
(f) the planned effective date of the UCITS merger;
(g) the rules applicable respectively to the transfer of assets and the exchange of units; and
(h) in the case of a **UCITS merger** where the **receiving UCITS** or the **sub-fund** is being specially formed for the purpose, the **instrument constituting the scheme** of the newly constituted **receiving UCITS**.

[Note: article 40(1) of the **UCITS Directive**]

**7.7.8 FCA**

The management companies of the merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of the UCITS merger.

[Note: article 40(2) of the **UCITS Directive**]

**Verification by the depositary**

The depositary of a UCITS scheme that is either a merging UCITS or a receiving UCITS in a proposed UCITS merger must verify that the statements in the common draft terms of merger required under ■ COLL 7.7.7 R (2)(a), ■ (f) and ■ (g), to the extent they relate to the scheme for which it is the depositary, conform with the provisions of the regulatory system and the instrument constituting the scheme.

[Note: article 41 of the **UCITS Directive**]

**Information to be given to unitholders**

(1) The authorised fund manager of a UCITS scheme that is a merging UCITS or a receiving UCITS in a proposed UCITS merger must ensure that a document containing appropriate and accurate information on the merger is provided to the unitholders of that scheme so as to enable them to:

(a) make an informed judgment about the impact of the proposal on their investment;

(b) exercise their rights under regulation 12 (Right of redemption) of the **UCITS Regulations 2011**; and

(c) where applicable, exercise their right to vote on whether or not to approve the merger in accordance with ■ COLL 7.7.4 R (2)(a) (UCITS mergers).

(2) Where a **UCITS scheme** is the merging UCITS in a **domestic UCITS merger** or **cross-border UCITS merger**, its authorised fund manager must provide the information document in (1):

(a) to the unitholders of the merging UCITS and (in the case of a domestic UCITS merger) the receiving UCITS only after the FCA has given its approval to the UCITS merger proposal under regulation 9 of the **UCITS Regulations 2011**; and

(b) where the receiving UCITS (in the case of a cross-border UCITS merger) is an EEA UCITS scheme, to the unitholders of that scheme only after the Home State regulator of each merging UCITS has authorised the UCITS merger proposal under
national measures implementing article 39 of the UCITS Directive;

and in either case must do so at least 30 days before the last date by which unitholders may request repurchase or redemption of their units or, where applicable, conversion without additional charge.

(3) The information document to be provided to the unitholders of the merging UCITS and the receiving UCITS under (1) must include the following:

(a) the background to and the rationale for the proposed UCITS merger;

(b) the possible impact of the proposed UCITS merger on unitholders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the UCITS merger;

(c) any specific rights unitholders have in relation to the proposed UCITS merger, including but not limited to:
   (i) the right to obtain additional information;
   (ii) the right to obtain a copy of the report of the independent auditor or the depositary on request;
   (iii) the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge under regulation 12 of the UCITS Regulations 2011 or, if applicable, the equivalent national implementing measure of the UCITS Home State; and
   (iv) the last date for exercising that right;

(d) the relevant procedural aspects and the planned effective date of the merger; and

(e) a copy of the key investor information of the receiving UCITS.

(4) If a UCITS marketing notification in respect of the merging UCITS or receiving UCITS has been made, the information document referred to in (3) must be provided in the official language, or one of the official languages, of the relevant Host State in which units of the UCITS scheme are to be marketed, or in a language approved by its Host State regulator. The authorised fund manager of the relevant UCITS scheme must provide an accurate translation of the information document.
General rules regarding the content of merger information to be provided to unitholders

(1) The information document that must be provided to unitholders under COLL 7.7.10 R (Information to be given to unitholders) by the authorised fund manager of a UCITS scheme must be written in a concise manner and in non-technical language.

(2) In the case of a proposed cross-border UCITS merger, the authorised fund manager of the UCITS scheme, being either the merging UCITS or the receiving UCITS respectively, must explain in plain language any terms or procedures relating to the EEA UCITS scheme which differ from those commonly used in the United Kingdom.

(3) The information to be provided to the unitholders of the merging UCITS must meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation, drawing their attention to the key investor information of the receiving UCITS and emphasising the desirability of reading it.

(4) The information to be provided to the unitholders of the receiving UCITS must focus on the operation of the merger and its potential impact on the receiving UCITS.

Specific rules regarding the content of merger information to be provided to unitholders of the merging UCITS

(1) Where the merging UCITS is a UCITS scheme, the information document that its authorised fund manager must provide to its unitholders under COLL 7.7.10 R (3)(b) must also include:

   (a) details of any differences in the rights of unitholders of the merging UCITS before and after the proposed UCITS merger takes effect;
(b) if the *key investor information* of the *merging UCITS* and the *receiving UCITS* show *synthetic risk and reward indicators* in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;

(c) a comparison of all charges, fees and expenses for both *schemes*, based on the amounts disclosed in their respective *key investor information*;

(d) if the *merging UCITS* applies a performance-related fee, an explanation of how it will be applied up to the point at which the *merger* becomes effective;

(e) if the *receiving UCITS* applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those *unitholders* who previously held *units* in the *merging UCITS*;

(f) in cases where costs associated with the preparation and the completion of the *merger* may be charged to either the *merging* or the *receiving UCITS* or any of their *unitholders*, details of how those costs are to be allocated; and

(g) an explanation of whether the *authorised fund manager* of the *merging UCITS* itself intends to undertake any *rebalancing of the portfolio* before the merger takes effect.

(2) The information to be provided under **COLL 7.7.10 R (3)(c)** must also include:

(a) details of how any accrued income in each *scheme* is to be treated; and

(b) an indication of how the report of the independent auditor or the *depositary* may be obtained.

(3) The information to be provided in accordance with **COLL 7.7.10 R (3)(d)** must include:

(a) where required by **COLL 7.6.2 R** (Schemes of arrangement: requirements), the procedure by which *unitholders* will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

(b) the details of any intended suspension of *dealing in units* to enable the merger to be carried out efficiently; and

(c) when the merger will take effect in accordance with regulation 13 of the *UCITS Regulations 2011*.

(4) The information to be provided to the *unitholders* of the *merging UCITS* must include:
(a) the period during which those *unitholders* will be able to continue making subscriptions and requesting *redemptions* of *units* in the scheme;

(b) the time when those *unitholders* not making use of their rights granted under regulation 12 of the *UCITS Regulations 2011*, within the relevant time limit, will be able to exercise their rights as *unitholders* of the *receiving UCITS*; and

(c) an explanation that once the merger proposal is approved by the resolution of a general meeting of the *unitholders* of the *merging UCITS*, those *unitholders* who vote against the proposal or who do not vote at all, and who do not make use of their rights granted under regulation 12 of the *UCITS Regulations 2011* within the relevant time limit, will become *unitholders* of the *receiving UCITS*.

(5) If a summary of the key points of the merger proposal is provided at the beginning of the document providing information on the merger proposal, it must cross-refer to the parts of the document where further information is provided.

[Note: article 4 of the *UCITS implementing Directive No 2*]

### Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS

1. Where the receiving UCITS is a UCITS scheme, the information that its *authorised fund manager* must provide to its *unitholders* under ■ COLL 7.7.10 R (3)(b) must also include an explanation of whether the *authorised fund manager* expects the merger to have any material effect on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

2. In addition to (1), the *authorised fund manager* of the receiving UCITS must provide to its *unitholders* the information referred to in ■ COLL 7.7.13 R (2), ■ (3), and ■ (5).

[Note: article 4 of the *UCITS implementing Directive No 2*]

1. An *authorised fund manager* may add other information to that which is required by ■ COLL 7.7.10 R to ■ COLL 7.7.14 R if it considers that it is relevant in the context of the proposed UCITS merger. For example, it may be appropriate for the information provided in accordance with ■ COLL 7.7.13 R (3)(a) to contain a recommendation by the respective *manager* of an AUT or the *directors* of an ICVC as to the course of action the *unitholders* should take.

2. Where an *authorised fund manager* chooses to include a summary of the key points as allowed by ■ COLL 7.7.13 R (5), its inclusion does not relieve the *authorised fund manager* of its obligation to avoid the use of long or technical explanations in the rest of the document.
Key investor information

7.7.16 FCA [Note: recitals (2) and (3) and article 4(6) of the UCITS implementing Directive No 2]

The authorised fund manager of a merging UCITS must provide an up-to-date version of the key investor information of the receiving UCITS to its existing unitholders.

7.7.17 FCA [Note: article 5(1) of the UCITS implementing Directive No 2]

(1) Where a UCITS scheme is the receiving UCITS in a cross-border UCITS merger, its authorised fund manager must ensure that an up-to-date version of the key investor information document of the receiving UCITS is made available to the management company of the merging UCITS for the purpose of providing it to investors in that UCITS.

(2) Where the key investor information document of the receiving UCITS has been amended for the purpose of (1), the authorised fund manager of the receiving UCITS must also provide it to all its existing unitholders.

7.7.18 FCA [Note: article 5(2) of the UCITS implementing Directive No 2]

New unitholders

Between the date when the information required under COLL 7.7.10 R is provided to unitholders and the date when the merger takes effect, the information document and the up-to-date key investor information of the receiving UCITS must be provided to each person who purchases or subscribes for units in either the merging UCITS or the receiving UCITS or who asks to receive copies of the instrument constituting the scheme, prospectus or key investor information of either scheme.

7.7.19 FCA [Note: article 6 of the UCITS implementing Directive No 2]

Method of providing merger information to unitholders

The authorised fund manager of the merging UCITS and the receiving UCITS must provide the information required by COLL 7.7.10 R to COLL 7.7.14 R to unitholders in a durable medium.

7.7.20 FCA [Note: article 7 of the UCITS implementing Directive No 2]

Merger costs

The authorised fund manager of a UCITS scheme that is either a merging UCITS or a receiving UCITS must ensure that any legal, advisory, administrative or any other costs associated with the preparation and completion of the UCITS merger are not charged to either scheme or to any of its unitholders.

7.7.20 [Note: article 46 of the UCITS Directive]
Effective merger date, exchange ratio calculation date and publication of merger

(1) In a domestic UCITS merger, the effective date of the merger will be the date specified by the FCA in its order authorising the proposed merger in accordance with regulation 9 of the UCITS Regulations 2011.

(2) For a UCITS scheme which is the receiving UCITS in a cross-border UCITS merger, the effective date of the merger will be the date agreed by the FCA and the merging UCITS’ Home State regulator.

(3) For a UCITS scheme which is the receiving UCITS in a domestic UCITS merger or a cross-border UCITS merger:
   
   (a) the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash will be the date specified in the common terms of merger for that purpose; and
   
   (b) the FCA will publish the entry into effect of the merger in the record it keeps under section 347 (The record of authorised persons etc) of the Act in accordance with regulation 14 of the UCITS Regulations 2011.

(4) For a UCITS scheme which is the merging UCITS in a cross-border UCITS merger, the dates referred to in (2) and (3)(a) will be determined by the laws of the receiving UCITS Home State. Those dates will be after the date on which the merger proposal has been approved in accordance with COLL 7.7.4 R (2)(a) (UCITS mergers).

[Note: article 47 of the UCITS Directive]

Confirmation obligation on completion of a UCITS merger

The authorised fund manager of a UCITS scheme that is the receiving UCITS in either a domestic or cross-border UCITS merger must confirm in writing to the depositary of the UCITS scheme and the FCA that the merger transfer is complete.

[Note: article 48(4) of the UCITS Directive]

Regulation 13 of the UCITS Regulations 2011 sets out the conditions that must be fulfilled for a merger transfer to be considered complete.
COLL 7: Suspension of dealings and termination of authorised funds

Section 7.7: UCITS mergers
Chapter 8

Qualified investor schemes
8.1 Introduction

Application

(1) This chapter applies to:
(a) an authorised fund manager of an AUT or an ICVC;
(b) any other director of an ICVC;
(c) a depositary of an AUT or an ICVC; and
(d) an ICVC,
which is a qualified investor scheme.

(2) Where this chapter refers to rules in any other chapter of this sourcebook, those rules and any relevant guidance should be applied as if they referred to qualified investor schemes.

Purpose

(1) This chapter assists in achieving the statutory objective of protecting consumers by providing an appropriate degree of protection in respect of authorised funds that are only intended for investors that are, in general, prepared to accept a higher degree of risk in their investments or have a higher degree of experience and expertise than investors in retail schemes.

(2) This section ceases to apply where a qualified investor scheme has converted to be authorised as a UCITS scheme or a non-UCITS retail scheme.

Qualified investor schemes: eligible investors

(1) The authorised fund manager of a qualified investor scheme must take reasonable care to ensure that ownership of units in that scheme is only recorded in the register for a person that falls into one or more of the categories set out in COLL 8 Annex 1 R(Qualified Investor Scheme: eligible investors).

(2) The authorised fund manager will be regarded as complying with (1) to the extent that it can show that it was reasonable
for it to rely on relevant information provided by another person.

Qualified investor schemes - explanation

(1) **Qualified investor schemes** are **authorised funds** which may only be sold to sophisticated investors. Therefore, the **authorised fund manager** must take reasonable care to ensure that subscription in relation to the **units** of this type of **scheme** should only be in relation to the **client** types set out in COLL 8 Annex 1R.

(2) Accordingly, **qualified investor schemes** have a more relaxed set of **rules** governing their operation and in particular their investment powers than for **retail schemes**. A **qualified investor scheme** is essentially a mixed asset type of scheme where different types of permitted asset may be included as part of the **scheme property**, depending on the investment objectives and policy of that scheme and within any restrictions in the **rules**.

Application and notification procedures

Details of the application procedures in respect of **qualified investor schemes** are contained in ▼ **COLL 2.1** (Authorised fund applications). **COLLG** provides details on how notifications may be made to the **FCA**.
8.2 Constitution

Application

8.2.1 FCA

This section applies to an authorised fund manager in respect of a qualified investor scheme.

Classes of unit

8.2.2 FCA

A qualified investor scheme may issue such classes of unit as are set out in the instrument constituting the scheme, provided the rights of any class are not unfairly prejudicial as against the interests of the unitholders of any other class of units in that scheme.

Names of schemes, sub-funds, and classes of units

8.2.3 FCA

(1) The authorised fund manager must ensure that the name of the scheme, a sub-fund or a class of unit is not undesirable or misleading.

(2) An authorised fund or a sub-fund may only be named or marketed as a 'money market fund' if it is:

(a) a short-term money market fund; or

(b) a money market fund.

[Note: Box 1, paragraph 2 of CESR's guidelines on a common definition of European money market funds]

Undesirable and misleading names

8.2.4 FCA

COLL 6.9.6 G (Undesirable or misleading names) contains guidance as to names which may be undesirable or misleading.

Instrument constituting the scheme

8.2.5 FCA

The statements and provisions required by COLL 8.2.6 R must be included in the instrument constituting the scheme of a qualified investor scheme.
Table: contents of the instrument constituting the scheme

This table belongs to COLL 8.2.5 R

1 Description of the authorised fund

Information detailing:

(1) the name of the authorised fund;

(2) that the authorised fund is a qualified investor scheme; and

(3) in the case of an ICVC, whether the head office of the company is situated in England and Wales or Wales or Scotland or Northern Ireland.

Property Authorised Investment Funds

1A For a property authorised investment fund, a statement that:

(1) it is a property authorised investment fund;

(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and

(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the fund, the authorised fund manager is entitled to delay any redemption or cancellation of units in accordance with 6A if the authorised fund manager reasonably considers such action to be:

(a) necessary in order to enable an orderly reduction of the holding to below 10%; and

(b) in the interests of the unitholders as a whole.

2 Constitution

The following statements:

(1) the scheme property of the scheme is entrusted to a depositary for safekeeping (subject to any exception permitted by the rules);

(2) if relevant, the duration of the scheme is limited and, if so, for how long;

(3) charges and expenses of the scheme may be taken out of scheme property;

(4) for an ICVC:

(a) what the maximum and minimum sizes of the scheme’s capital are; and

(b) the unitholders are not liable for the debts of the company; and

(4A) for an ICVC which is an umbrella, a statement that the assets of a sub-fund belong exclusively to that sub-fund and shall not be used to discharge directly or indirectly the liabilities
of, or claims against, any other person or body, including the umbrella, or any other sub-fund, and shall not be available for any such purpose;

(5) for an AUT:

(a) the trust deed:

(i) is made under and governed by the law of England and Wales, or the law of Scotland or the law of Northern Ireland;

(ii) is binding on each unitholder as if he had been a party to it and that he is bound by its provisions; and

(iii) authorises and requires the trustee and the manager to do the things required or permitted of them by its terms;

(b) subject to the provisions of the trust deed and all the rules made under section 247 of the Act (Trust scheme rules):

(i) the scheme (other than sums held to the credit of the distribution account) is held by the trustee on trust for the unitholders according to the number of units held by each unitholder or, where relevant, according to the number of individual shares in the scheme property represented by the units held by each unitholder; and

(ii) the sums standing to the credit of any distribution account are held by the trustee on trust to distribute or apply in accordance with COLL 8.5.15 R (Income);

(c) a unitholder is not liable to make any further payment after he has paid the price of his units and that no further liability can be imposed on him in respect of the units he holds; and

(d) payments to the trustee by way of remuneration are authorised to be paid (in whole or in part) out of the scheme property.

3 Investment objectives

A statement of the object of the scheme, in particular the types of investments and assets in which it and each sub-fund (where applicable) may invest and that the object of the scheme is to invest in property of that kind with the aim of spreading investment risk.

4 Units in the scheme
A statement of:

(1) the classes of units which the scheme may issue, indicating, for a scheme which is an umbrella, which class or classes may be issued in respect of each sub-fund; and

(2) the rights attaching to units of each class (including any provisions for the expression in two denominations of such rights).

5 Limitation on issue of and redemption of units
Details as to:

(1) the provisions relating to any restrictions on the right to redeem units in any class; and

(2) the circumstances in which the issue of the units of any particular class may be limited.

6 Income and distribution
Details of the person responsible for the calculation, transfer, allocation and distribution of income for any class of unit in issue during the accounting period.

Redemption or cancellation of units on breach of law or rules

6A A statement that where any holding of units by a unitholder is (or is reasonably considered by the authorised fund manager to be) an infringement of any law, governmental regulation or rule, those units must be redeemed or cancelled.

7 Base currency
A statement of the base currency of the scheme.

8 Meetings
Details of the procedures for the convening of meetings and the procedures relating to resolutions, voting and the voting rights for unitholders.

9 Powers and duties of the authorised fund manager and depositary
Where relevant, details of any function to be undertaken by the authorised fund manager and depositary which the rules in COLL require to be stated in the instrument constituting the scheme.

10 Termination and suspension
Details of:

(1) the grounds under which the authorised fund manager may initiate a suspension of the scheme and any associated procedures; and

(2) the methodology for determining the rights of unitholders to participate in the scheme property on winding up.

10A Investment in overseas property through an intermediate holding vehicle
If investment in an overseas immovable is to be made through an intermediate holding vehicle or a series of intermediate holding vehicles, a statement that the purpose of that intermediate holding vehicle or series of intermediate holding vehicles will be to enable the holding of overseas immovables by the scheme.

11 Other relevant matters

Details of those matters which enable the scheme, authorised fund manager or depositary to obtain any privilege or power conferred by the rules in COLL which is not otherwise provided for in the instrument constituting the scheme.

Limited issue

Units whose issue may be limited can only be issued if permitted by the instrument constituting the scheme, under the conditions set out in the prospectus and provided that this will not materially prejudice any existing unitholders in the scheme.
8.3 Investor relations

Application

This section applies to an ICVC which is a qualified investor scheme and the authorised fund manager of a qualified investor scheme.

Drawing up and availability of prospectus

(1) An authorised fund manager must ensure that a prospectus of a qualified investor scheme is drawn up which contains the information, specified in COLL 8.3.4 R (Table: contents of qualified investor scheme prospectus), and the authorised fund manager must:

(a) revise the prospectus immediately upon the occurrence of any materially significant change in the information required to be stated within it;

(b) include the date of any revision in a prominent manner in the revised prospectus;

(c) send a copy of the original and any revised prospectus to the FSA; and

(d) review the prospectus periodically and revise it to take account of any significant change or new matter.

(2) The prospectus must not contain any provision which is unfairly prejudicial to the interests of unitholders generally or to the unitholders of any class of units.

(3) An ICVC or the manager of an AUT must offer a copy of the scheme’s most recent prospectus free of charge to any person eligible to invest in a qualified investor scheme prior to the purchase of any units.

False or misleading prospectus

The authorised fund manager must ensure that the prospectus does not contain any untrue or misleading statement or omit any matter required by the rules in this sourcebook to be included in it.
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<tr>
<th>1</th>
<th>Document status</th>
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<tbody>
<tr>
<td></td>
<td>A statement that this document is the prospectus of the authorised fund valid as at a particular date which shall be the date of the document.</td>
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<th>2</th>
<th>Description of the authorised fund</th>
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<tr>
<td></td>
<td>Information detailing:</td>
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<td>(1)</td>
<td>the name of the authorised fund;</td>
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<tr>
<td>(2)</td>
<td>that the authorised fund is either an ICVC or an AUT;</td>
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<td>(3)</td>
<td>that the scheme is a qualified investor scheme;</td>
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<td>(4)</td>
<td>where relevant, that the unitholders in an ICVC are not liable for the debts of the authorised fund;</td>
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<td>(5)</td>
<td>where relevant, the address of the ICVC's head office and the address in the United Kingdom for service on the ICVC of documents required or authorised to be served on it;</td>
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<td>(6)</td>
<td>the effective date of the authorisation order made by the FCA and, if the duration of the authorised fund is not unlimited, when it will or may terminate;</td>
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<td>(7)</td>
<td>the base currency for the authorised fund;</td>
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<td>(8)</td>
<td>where relevant, the maximum and minimum sizes of the ICVC's capital; and</td>
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<td>(9)</td>
<td>the circumstances in which the authorised fund may be wound up under the rules in COLL and a summary of the procedure for, and the rights of unitholders under, such a winding up.</td>
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<th>3</th>
<th>Investment objectives and policy</th>
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<td></td>
<td>Sufficient information to enable a unitholder to ascertain:</td>
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<td>(1)</td>
<td>(a) the investment objectives of the authorised fund;</td>
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<td>(b)</td>
<td>the authorised fund's investment policy for achieving those investment objectives, including:</td>
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<td>(i)</td>
<td>the general nature of the portfolio and any intended specialisation;</td>
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<td>(ii)</td>
<td>the policy for the spreading of risk in the scheme property; and</td>
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<tr>
<td>(iii)</td>
<td>the policy in relation to the exercise of borrowing powers;</td>
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<tr>
<td>(c)</td>
<td>a description of any restrictions in the assets in which investment may be made; and</td>
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</table>
(d) the extent (if any) to which that investment policy does not envisage remaining fully invested at all times.

(2) For investment in immovables:
(a) the countries or territories of immovables in which the authorised fund may invest;
(b) the policy of the authorised fund manager in relation to insurance of immovables forming part of the scheme property; and
(c) the policy of the authorised fund manager in relation to the granting of options over immovables in the scheme property and the purchase of options on immovables.

(3) If intended, whether the scheme property may consist of units in collective investment schemes ("second schemes") which are managed by or operated by the authorised fund manager or by one of its associates and a statement as:
(a) to the basis of the maximum amount of the charges in respect of transactions in a second scheme; and
(b) the extent to which any such charges will be reimbursed to the scheme.

(4) If intended, whether the scheme may enter into stock lending transactions and, if so, what procedures will operate and what collateral will be required.

(5) Where a scheme is a feeder scheme which (in respect of investment in units in a single collective investment scheme) is dedicated to units in a collective investment scheme, details of the master scheme and the minimum (and, if relevant, maximum) investment that the feeder scheme may make in it;

(6) Where the scheme is a money market fund or a short-term money market fund, a statement identifying it as such a fund and a statement that the scheme's investment objectives and policies will meet the conditions in the definition of money market fund or short-term money market fund, as appropriate.

4 Distributions and accounting dates

Relevant details of accounting and distribution dates and a description of the procedures:
(1) for determining and applying income (including how any distributable income is paid); and
(2) relating to unclaimed distributions.

5 The characteristics of units in the authorised fund
Information as to:
(1) the names of the classes of units in issue or available for issue and the rights attached to them in so far as they vary from the rights attached to other classes;
(2) how unitholders may exercise their voting rights and what these are; and
(3) the circumstances where a mandatory redemption, cancellation or conversion of units from one class to another may be required.

6 The authorised fund manager
The following particulars of the authorised fund manager:
(1) its name and the nature of its corporate form;
(2) the country or territory of its incorporation;
(3) the date of its incorporation and if the duration of its corporate status is limited, when that status will or may cease;
(4) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
(5) the address of its registered office, its head office, and, if different, the address of its principal place of business in the United Kingdom;
(6) the amount of its issued share capital and how much of it is paid up;
(7) for an ICVC, a summary of the material provisions of the contract between the ICVC and the authorised fund manager which may be relevant to unitholders including provisions (if any) relating to termination, compensation on termination and indemnity; and
(8) for an AUT, the names of the directors of the manager.

7 Directors of an ICVC, other than the ACD
Other than for the ACD:
(1) the names and positions in the ICVC of the directors; and
(2) the manner, amount and calculation of the remuneration of the directors.

8 The depositary
The following particulars of the depositary:
(1) its name and the nature of its corporate form;
(2) the country or territory of its incorporation;
(3) the address of its registered office and the address of its head office if that is different from the address of its registered office; and

(4) if neither its registered office nor its head office is in the United Kingdom, the address of its principal place of business in the United Kingdom.

9 The investment adviser

If an investment adviser is retained in connection with the business of the authorised fund, its name and whether or not it is authorised by the FCA.

10 The auditor

The name of the auditor of the authorised fund.

11 The register of unitholders

Details of the address in the United Kingdom where the register of unitholders is kept and can be inspected by unitholders.

12 Payments out of the scheme property

The payments that may be made out of the scheme property to any person whether by way of remuneration for services, or reimbursement of expense and for each category of remuneration or expense, the following should be specified:

(1) the current rates or amounts of such remuneration;

(2) how the remuneration will be calculated and accrue and when it will be paid;

(3) if notice has been given to unitholders of the authorised fund manager's intention to:

(a) introduce a new category of remuneration for its services; or

(b) increase the basis of any current charge; or

(c) change the basis of the treatment of a payment from the capital property set out in COLL 8.5.13 R (2) (Payments);

particulars of that introduction or increase and when it will take place;

(4) the types of any other charges and expenses that may be taken out of the scheme property; and

(5) if, in accordance with COLL 8.5.13 R (2), all or part of the remuneration or expense are to be treated as a capital charge:

(a) that fact; and

(b) the basis of the charge which may be so treated.

13 Dealing
Details of:

(1) the *dealing days* and times in the *dealing day* on which the *authorised fund manager* will receive requests for the *sale* and *redemption* of *units*;

(2) the procedures for effecting:
   (a) the *issue* and *cancellation* of *units*;
   (b) the *sale* and *redemption* of *units*; and
   (c) the *settlement* of transactions;

(3) the steps required to be taken by a *unitholder* in redeeming *units* before he can receive the proceeds including any relevant notice periods and the circumstances and periods where a deferral of payment as provided in COLL 8.5.11 R (3) (Sale and redemption) may be applied;

(4) the circumstances in which the *redemption* of *units* may be suspended;

(5) the *days* and times in the *day* on which recalculation of the *price* will commence;

(6) details of the minimum number or value of each type of *unit* in the *authorised fund* which:
   (a) any one *person* may hold; and
   (b) may be the subject of any one transaction of *sale* or *redemption*;

(7) the circumstances in which the *authorised fund manager* may arrange for, and the procedure for, a *redemption* of *units* in specie;

(8) the circumstances in which the further *issue* of *units* in any particular *class* may be limited and the procedures relating to this:

(9) the circumstances in which direct *issue* or *cancellation* of *units* by the *ICVC* or the *trustee* (as appropriate) may occur and the relevant procedures for such *issues* and *cancellations*; and

(10) whether a *unitholder* may effect transfer of title to *units* on the authority of an *electronic communication* and if so the conditions that must be satisfied in order to effect a transfer.

**14 Valuation of scheme property**

Details as to:

(1) how frequently and at what times of the *day* the *scheme property* will be regularly valued to determine the *price* at which *units* in the *scheme* may be purchased from or redeemed by the *authorised fund manager* and a descrip-
tion of any circumstance where the scheme property may be specially valued;

(2) in relation to each purpose for which the scheme property must be valued, the basis on which it will be valued; and

(3) how the price of units of each class will be determined, including whether a forward or historic price basis is to be applied.

15 Sale and redemption charges

If the authorised fund manager makes any charges on sale or redemption of units, details of the charging structure and how notice will be provided to unitholders of any increase.

15A Property Authorised Investment Funds

For a property authorised investment fund, a statement that:

(1) it is a property authorised investment fund;

(2) no body corporate may seek to obtain or intentionally maintain a holding of more than 10% of the net asset value of the fund; and

(3) in the event that the authorised fund manager reasonably considers that a body corporate holds more than 10% of the net asset value of the fund, the authorised fund manager is entitled to delay any redemption or cancellation of units if the authorised fund manager reasonably considers such action to be:

(a) necessary in order to enable an orderly reduction of the holding to below 10%; and

(b) in the interests of the unitholders as a whole.

16 General information

Details as to:

(1) when annual and half-yearly reports will be published; and

(2) the address at which copies of the instrument constituting the scheme, any amending instrument and the most recent annual reports may be inspected and from which copies may be obtained.

17 Information on the umbrella

In the case of a scheme which is an umbrella, the following information:

(1) that a unitholder may exchange units in one sub-fund for units in another sub-fund and that such an exchange is treated as a redemption and sale;
what charges may be made on exchanging *units* in one *sub-fund* for *units* in other *sub-funds*;

(3) the policy for allocating between *sub-funds* any assets of, or costs, charges and expenses payable out of, the *scheme property* which are not attributable to any particular *sub-fund*;

(4) in respect of each *sub-fund*, the currency in which the *scheme property* allocated to it will be valued and the *price of units* calculated and payments made, if this currency is not the *base currency* of the *umbrella*; and

(5) for an *ICVC*, that:

(a) its *sub-funds* are segregated portfolios of assets and, accordingly, the assets of a *sub-fund* belong exclusively to that *sub-fund* and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other *person* or body, including the *umbrella*, or any other *sub-fund*, and shall not be available for any such purpose; and

(b) while the provisions of the *OEIC Regulations* provide for segregated liability between *sub-funds*, the concept of segregated liability is relatively new. Accordingly, where claims are brought by local creditors in foreign courts or under *foreign law contracts*, it is not yet known how those foreign courts will react to regulations 11A and 11B of the *OEIC Regulations*.

18 Application of the prospectus contents to an umbrella

For a *scheme* which is an *umbrella*, information required must be stated:

(1) in relation to each *sub-fund* where the information for any *sub-fund* differs from that for any other; and

(2) for the *umbrella* as a whole, but only where the information is relevant to the *umbrella* as a whole.

18A Investment in overseas property through an intermediate holding vehicle

If investment in an overseas immovable is to be made through an *intermediate holding vehicle* or a series of *intermediate holding vehicles* a statement disclosing the existence of that *intermediate holding vehicle* or series of *intermediate holding vehicles* and confirming that the purpose of that *intermediate holding vehicle* or series of *intermediate holding vehicles* is to enable the holding of overseas immovables by the *scheme*.

19 Additional information
Any other material information which is within the knowledge of the directors of an ICVC or the manager of an AUT, or which the directors or manager would have obtained by the making of reasonable enquiries which investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed judgement about the merits of investing in the authorised fund and the extent and characteristics of the risks accepted by so participating.

Report and accounts

(1) The authorised fund manager must prepare a report in respect of each annual accounting period and half-yearly accounting period.

(2) [deleted]

(2A) Where the first annual accounting period of a scheme is less than 12 months, a half-yearly report need not be prepared.

(3) The authorised fund manager must within a reasonable time after the end of each relevant accounting period, publish the annual report and half-yearly report and provide a copy free of charge on request to any unitholder.

(4) [deleted]

(5) The authorised fund manager must provide free of charge on the request of any person eligible to invest in the scheme a copy of the latest annual or half-yearly report before the conclusion of any sale to such person.

(6) The authorised fund manager must provide a copy of each annual and half-yearly report to the FCA.

(7) For a scheme which is an umbrella, any annual report provided under (3) or (5) may be a report prepared under COLL 8.3.5A R (3), but the authorised fund manager must nevertheless provide free of charge the report prepared under COLL 8.3.5A R (2) if a unitholder or any other person eligible to invest in the scheme requests it.

Contents of the annual report

(1) An annual report, other than for a scheme which is an umbrella, must contain:

(a) the accounts for the annual accounting period prepared in accordance with the requirements of the IMA SORP;

(b) the report of the authorised fund manager in accordance with COLL 8.3.5C R (Authorised fund manager’s report);
(c) the report of the depositary in accordance with ■ COLL 8.3.5D R (Report of the depositary); and

(d) the report of the auditor in accordance with ■ COLL 4.5.12 R (Report of the auditor).

(2) An annual report on a scheme which is an umbrella must be prepared for the umbrella as a whole and must contain:

(a) for each sub-fund, the accounts required by (1)(a) and the report of the authorised fund manager in accordance with ■ COLL 8.3.5C R;

(b) an aggregation of the accounts required by (a);

(c) the report of the depositary in accordance with ■ COLL 8.3.5D R; and

(d) the report of the auditor in accordance with ■ COLL 4.5.12 R.

(3) The authorised fund manager of a scheme which is an umbrella may, in addition to complying with (2), prepare a further annual report for any one or more individual sub-funds of the umbrella, in which case it must contain:

(a) for the sub-fund, the accounts required by (1)(a) and the report of the authorised fund manager in accordance with ■ COLL 8.3.5C R;

(b) the report of the depositary in accordance with ■ COLL 8.3.5D R; and

(c) the report of the auditor in accordance with ■ COLL 4.5.12 R.

(4) The directors of an ICVC or the manager of an AUT must ensure that the accounts referred to in (1)(a), (2)(a) and (3)(a) give a true and fair view of the net revenue and the net capital gains or losses on the scheme property of the authorised fund or sub-fund for the relevant annual accounting period, and of the financial position of the authorised fund or sub-fund as at the end of that period.

Contents of the half-yearly report

(1) A half-yearly report on an authorised fund or sub-fund must contain:

(a) the accounts for the half-yearly accounting period which must be prepared in accordance with the requirements of the IMA SORP; and

(b) the report of the authorised fund manager in accordance with ■ COLL 8.3.5C R.
(2) For a scheme which is an umbrella, the authorised fund manager may choose whether the half-yearly report is prepared for the umbrella as a whole, or for each individual sub-fund, or both.

**Authorised fund manager's report**

The report of the *authorised fund manager* must include:

1. a review of the investment activities during the period to which the report relates;
2. particulars of any fundamental or significant change to the *authorised fund* made since the date of the last report; and
3. any other information which would enable *unitholders* to make an informed judgement on the development of the activities of the *authorised fund* during the period and the results of those activities as at the end of the period.

**Report of the depositary**

1. The *depositary* must make an annual report to *unitholders* which must be included in the annual report.
2. The *depositary's* report must contain:
   (a) a description, which may be in summary form, of the duties of the *depositary* under COLL 8.5.4 R (Duties of the depositary) and in respect of the safekeeping of the *scheme property*; and
   (b) a statement whether in any material respect:
      (i) the *issue, sale, redemption and cancellation* and calculation of the *price* of the *units* and the application of the *authorised fund's* revenue, have not been carried out in accordance with the *rules* in this sourcebook and, where applicable, the *OEIC Regulations* and the *instrument constituting the scheme*; and
      (ii) the investment and borrowing powers and restrictions applicable to the *authorised fund* have been exceeded.

**Signing of annual and half-yearly reports**

The annual reports in COLL 8.3.5AR (1) and (2) and the half-yearly reports in COLL 8.3.5BR (1) must:

1. in the case of an ICVC, if there is:
   (a) more than one *director*, be approved by the board of *directors* and signed on their behalf by the *ACD* and at least one other *director*; or
(b) no director other than the ACD, be signed by the ACD;

(2) in the case of an AUT, if the authorised fund manager has:

(a) more than one director, be signed by at least two directors of the authorised fund manager; or

(b) only one director, be signed by the director of the authorised fund manager.

### Alterations to the scheme and notices to unitholders

(1) Any proposed change which would be reasonably considered to be a fundamental change to the scheme requires the prior sanction of an ordinary resolution of the unitholders.

(2) Any proposed change to the scheme which is not within (1) but which would be reasonably considered to be significant, requires the giving of reasonable notice to unitholders to become effective.

(3) Alterations affecting only a particular sub-fund or class of units may be approved in accordance with (1) or (2) for the particular sub-fund or class of units, with the consent of, or, as the case may be, notice to, the relevant unitholders.

(4) This rule and COL 8.3.8 R (Meetings) will apply (unless the context requires otherwise) to alterations concerning unitholders of a particular sub-fund or class of units rather than the scheme or sub-fund as a whole.

### Alterations to the scheme and notices to unitholders: guidance

Although account should be taken of the guidance on fundamental changes (COL 4.3.5 G (Guidance on fundamental changes)) and significant changes (COL 4.3.7 G (Guidance on significant changes)) the impact of any change to the scheme should be assessed individually based on the nature of the scheme and its investor profile.

### Meetings

(1) Details of the procedures for the convening and conducting of meetings and resolutions must be set out in the instrument constituting the scheme and be reasonable and fair as between all relevant parties.

(2) The authorised fund manager must record and keep minutes for six years of all proceedings to which COL 8.3.6 R (Alterations to the scheme and notices to unitholders) and this rule are relevant.
(3) The provisions in COLL 4.4.12 R (Notices to unitholders),
COLL 4.4.13 R (Other notices) and COLL 4.4.14 G (References to
to writing and electronic documents) apply in relation to qualified investor schemes.
8.4 Investment and borrowing powers

Application

This section applies to an ICVC which is a qualified investor scheme and an authorised fund manager and a depositary of a qualified investor scheme.

8.4.1 FCA

(1) Where this section refers to a second scheme, and the second scheme is a feeder scheme, which (in respect of investment in units in collective investment schemes) is dedicated to units in a single collective investment scheme, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which the feeder scheme's master scheme invests.

(2) Where this section refers to a second scheme, and the second scheme is a master scheme to which (in respect of investment in units in collective investment schemes) the relevant qualified investor scheme is dedicated, the reference in this section to the second scheme must be read as if it were a reference to any scheme into which that master scheme invests.

Spread of risk

An authorised fund manager must take reasonable steps to ensure that the scheme property of a qualified investor scheme provides a spread of risk, taking into account the investment objectives and policy of the scheme as stated in the most recently published prospectus, and in particular, any investment objective as regards return to the unitholders (whether through capital appreciation or income or both).

Investment powers: general

(1) The scheme property of a qualified investor scheme may, subject to the rules in this chapter, comprise any assets or investments to which it is dedicated.

(2) The instrument constituting the scheme and the prospectus may further restrict:
(a) the kinds of assets in which the scheme property may be invested;
(b) the types of transactions permitted and any relevant limits; and
(c) the borrowing powers of the scheme.

Qualified investor schemes: general

The scheme property of a qualified investor scheme must, except where otherwise provided by the rules in this chapter, consist only of one or more of the following to which it is dedicated:

(1) any specified investment:
   (a) within articles 74 to 86 of the Regulated Activities Order; and
   (b) within article 89 (Rights to or interests in investments) of the Regulated Activities Order where the right or interest relates to a specified investment within (a);

(2) an interest in an immovable under COLL 8.4.11 R (Investment in property);

(3) precious metals; or

(4) a commodity contract traded on an RIE or a recognised overseas investment exchange.

Money market funds

The authorised fund manager of a qualified investor scheme which operates as a money market fund or short-term money market fund must satisfy the conditions in COLL 5.9.3 R (Investment conditions: short-term money market funds) and COLL 5.9.5 R (Investment conditions: money market funds) respectively.

[Note: box 2 and box 3 of CESR’s guidelines on a common definition of European money market funds]

Approved money market instruments held within a qualified investor scheme which is a short-term money market fund or money market fund must also satisfy the criteria in COLL 5.2.7F R to COLL 5.2.7H R (Approved money-market instruments).

Investment in collective investment schemes

(1) A qualified investor scheme may invest in units in a scheme (a 'second scheme') only if the second scheme is:
   (a) a regulated collective investment scheme; or
   (b) a scheme not within (a) where the authorised fund manager has taken reasonable care to determine that:
(i) it is the subject of an independent annual audit conducted in accordance with international standards on auditing;

(ii) the calculation of the net asset value of each of the second schemes and the maintenance of their accounting records is segregated from the investment management function;

(iii) (unless it is a master scheme to whose units the relevant qualified investor scheme is dedicated) it is prohibited from investing more than 15% of its value in units of schemes or, if there is no such prohibition, the qualified investor scheme's authorised fund manager is satisfied, on reasonable grounds and after making all reasonable enquiries, that no such investment will be made; and

(iv) it operates in accordance with the principle of risk spreading as described in COLL 8.4.2 R.

(2) A qualified investor scheme must not invest more than 20% in value of the scheme property in units in second schemes which are unregulated schemes or qualified investor schemes unless the authorised fund manager has carried out appropriate due diligence on each of the second schemes and has taken reasonable care to determine that, after making all reasonable enquiries and on reasonable grounds, the second scheme complies with relevant legal and regulatory requirements.

(3) The authorised fund manager of a qualified investor scheme with more than 20% in value of the scheme property invested in one or more second schemes which are unregulated schemes or qualified investor schemes must carry out appropriate due diligence on those schemes on an ongoing basis.

Investment in a collective investment scheme that is an umbrella

Where the second scheme in COLL 8.4.5 R is an umbrella, the provisions apply to each sub-fund as if it were a separate scheme.

(1) The guidance at COLL 5.7.11 G applies to an authorised fund manager of a qualified investor scheme carrying out due diligence for the purpose of COLL 8.4.5 R, as if that guidance related to COLL 8.4.5 R.

(2) Where COLL 5.7.11 G (10) refers to COLL 6.3 (Valuation and pricing), that reference should be read as if it were a reference to COLL 8.5.9 R (Valuation, pricing and dealing).

(3) In addition to the guidance at COLL 5.7.11 G the authorised fund manager should, as part of its due diligence process, consider whether the property of each of the second schemes is held in safekeeping by a third party, which
is subject to prudential regulation and independent of the investment manager of the second scheme and, if not, what controls over the property of the second scheme are in place to protect investors.

Delivery of property under a transaction in derivatives or a commodities contract

(1) An authorised fund manager must take reasonable care to determine the following when entering into any transaction in derivatives or any commodity contract which may result in any asset becoming part of the scheme property:

(a) if it is an asset in which the scheme property could be invested, that the transaction:
   (i) can be readily closed out; or
   (ii) would at the expected time of delivery relate to an asset which could be included in the scheme property under the rules in this chapter; or

(b) in any other case that the transaction can be readily closed out.

(2) An authorised fund manager may acquire an asset within (1) if its determination has proved incorrect and if it determines that acquisition is in the interests of the unitholders, provided it has the consent of the depositary.

(3) Any asset within (1) acquired in accordance with (2) may form part of the scheme property despite any other rule in this chapter until the position can be rectified.

Cover for transactions in derivatives and forward transactions

(1) A transaction in derivatives or a forward transaction may be entered into only if the maximum exposure, in terms of the principal or notional principal created by the transaction to which the scheme is or may be committed by another person, is covered globally under (2).

(2) Exposure is globally covered if adequate cover from within the scheme property is available to meet the scheme’s total exposure taking into account any reasonably foreseeable market movement.

(3) The total exposure relating to derivatives held in a qualified investor scheme may not exceed the net value of the scheme property.

(4) No element of cover may be used more than once.
Valuation of an OTC derivative

A transaction in an OTC derivative must be capable of valuation which it will only be if the authorised fund manager having taken reasonable care determines that, throughout the life of the derivative (if the transaction is entered into), it will be able to value the investment concerned with reasonable accuracy:

(1) on the basis of the pricing model; or

(2) on some other reliable basis reflecting an up-to-date market value;

which has been agreed between the authorised fund manager and the depositary.

Continuing nature of limits and requirements

(1) An authorised fund manager must, as frequently as necessary to ensure compliance with COLL 8.4.7 R (2) and COLL 8.4.7 R (4), re-calculate the amount of cover required in respect of derivatives and forwards positions in existence under this chapter.

(2) Derivatives and forwards positions may be retained in the scheme property only so long as they remain covered globally under COLL 8.4.7 R.

(3) An authorised fund manager must use a risk management process enabling it to monitor and measure as frequently as appropriate the risk of a scheme’s derivatives positions and their contribution to the overall risk profile of the scheme.

Permitted stock lending

(1) The ICVC, or the depositary at the request of the ICVC, or the trustee at the request of the manager, may enter into a repo contract or a stock lending arrangement within section 263B of the Taxation of Chargeable Gains Act 1992 (without extension by section 263C).

(2) The depositary must ensure that the value of any collateral, for the stock lending arrangement is at all times at least equal to the value of the securities transferred by the depositary.

(3) In the case of the expiry of validity of any collateral, the duty in (2) is satisfied if the depositary or the authorised fund manager, as appropriate, takes reasonable care to determine that sufficient collateral will be transferred by close of business on the day of expiry.
General power to borrow

8.4.10

(1) The ICVC or trustee (on the instructions of the manager) may borrow money for the use of the authorised fund on terms that the borrowing is to be repayable out of the scheme property.

(2) The authorised fund manager must ensure that the authorised fund's borrowing does not, on any day, exceed 100% of the net value of the scheme property and must take reasonable care to ensure that arrangements are in place that will enable borrowings to be closed out to ensure such compliance.

(3) In this rule "borrowing" also includes any arrangement (including a combination of derivatives) designed to achieve a temporary injection of money into the scheme property in the expectation that the sum will be repaid.

(4) Where the limit in (2) is breached, the authorised fund manager must take action in accordance with the principles set out in ■ COLL 8.5.3 R (3) to ■ COLL 8.5.3 R (5) (Duties of the authorised fund manager: investment and borrowing powers) to deal with that breach.

Investment in property

8.4.11

(1) Any investment in land or a building held within the scheme property of a qualified investor scheme must be in an immovable within (2).

(2) For an immovable:

(a) it must be situated in a country or territory identified in the prospectus;

(b) the authorised fund manager must have taken reasonable care to determine that the title to the interest in the immovable is a good marketable title; and

(c) the manager or the ICVC must have received a report from the appropriate valuer that:

(i) contains a valuation of the interest in the immovable (with and without any relevant existing mortgage); and

(ii) states that in the appropriate valuer's opinion the interest in the immovable would if acquired by the scheme be capable of being disposed of reasonably expeditiously at that valuation;

(d) unless (c) is satisfied, the manager or the ICVC must have received a report from an appropriate valuer valuing the interest in the immovable and stating that:
(i) the immovable is adjacent to or in the vicinity of another immovable included in the scheme property; and

(ii) in the opinion of the appropriate valuer, the total value of the interests in both immovables would at least equal the sum of the price payable for the interest in the immovable and the existing value of the interest in the other immovable; and

(e) it must not be bought:

(i) if it becomes apparent to the authorised fund manager that the report in either (c) or (d) could no longer reasonably be relied upon; or

(ii) at a price more than 105% of the valuation relevant to the interest for that immovable in the report in either (c) or (d).

(3) Any contents of any building may be regarded as part of the relevant immovable.

(4) An appropriate valuer must be a person who:

(a) has knowledge of and experience in the valuation of immovables of the relevant kind in the relevant area;

(b) is qualified to be a standing independent valuer of an authorised fund or is considered by the scheme's standing independent valuer to hold an equivalent qualification;

(c) is independent of the ICVC, the depositary and each of the directors of the ICVC or of the manager and trustee of the AUT; and

(d) has not engaged himself or any of his associates in relation to the finding of the immovable for the scheme or the finding of the scheme for the immovable.

### Investment in overseas property through an intermediate holding vehicle

(1) An overseas immovable may be held by a scheme through an intermediate holding vehicle whose purpose is to enable the holding of immovables by the scheme or a series of such intermediate holding vehicles, provided that the interests of unitholders are adequately protected. Any investment in an intermediate holding vehicle for the purpose of holding an overseas immovable shall be treated for the purposes of this section as if it were a direct investment in that immovable.

(2) An intermediate holding vehicle must be wholly owned by the scheme or another intermediate holding vehicle or series of
intermediate holding vehicles wholly owned by the scheme, unless and to the extent that local legislation or regulation relating to the intermediate holding vehicle holding the immovable requires a proportion of local ownership.

(1) The authorised fund manager may transfer capital and income between an intermediate holding vehicle and the scheme by the use of inter-company debt if the purpose of this is for investment in immovables and repatriation of income generated by such investment. In using inter-company debt, the authorised fund manager should ensure the following:

(a) a record of inter-company debt is kept in order to provide an accurate audit trail; and

(b) interest paid out on the debt instruments is equivalent to the net rental income earned from the immovables after deduction of the intermediate holding vehicle’s reasonable running costs (including tax).

(2) An intermediate holding vehicle should undertake the purchase, sale and management of immovables on behalf the scheme in accordance with the scheme’s investment objectives and policy.

(3) Wherever reasonably practicable, an intermediate holding vehicle should have the same auditor and accounting reference date as the scheme.

(4) The accounts of any intermediate holding vehicle should be consolidated into the annual and interim reports of the scheme.

(5) The authorised fund manager should provide sufficient information to enable the depositary to fulfil its duties under COLL in relation to the immovables held through an intermediate holding vehicle.

Investment limits for immovables

The following limits apply in respect of immovables held as part of the scheme property:

(1) the amount secured by mortgages over any immovable must not exceed 100% of the latest valuation by an appropriate valuer under COLL 8.4.11 R (2)(c) or COLL 8.4.11 R (2)(d) or COLL 8.4.13 R, as appropriate;

(2) no option may be granted to a person to buy or obtain an interest in any immovable comprised in the scheme property if this might unduly prejudice the ability to provide redemption; and

(3) the total of all premiums paid for options to purchase immovables must not exceed 10% of the scheme value in any 12 month period, calculated at the date of the granting of the option.
Standing independent valuer and valuation

(1) In relation to the appointment of a valuer the authorised fund manager must:

(a) at the outset appoint the standing independent valuer with the approval of the depositary and likewise upon any vacancy; and

(b) ensure that any immovables in the scheme property are valued by an appropriate valuer (standing independent valuer) appointed by the authorised fund manager.

(2) The following apply in relation to the functions of the standing independent valuer:

(a) the authorised fund manager must ensure that the standing independent valuer appointed under (1), procures the valuation of all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection) at least once a year;

(b) for the purposes of (a), any inspection in relation to adjacent properties of a similar nature and value may be limited to that of only one such representative property;

(c) the authorised fund manager must ensure that the standing independent valuer values the immovables, on the basis of a review of the last full valuation, at least once a month;

(d) if either the authorised fund manager or the depositary becomes aware of any matter which appears likely to:

(i) affect the outcome of a valuation of an immovable; or

(ii) cause the valuer to decide to value under (a), instead of under (c),

it must immediately inform the standing independent valuer of that matter;

(e) the authorised fund manager must use its best endeavours to ensure that any other affected person reports to the standing independent valuer immediately upon that person becoming aware of any matter within (d); and

(f) any valuation by the standing independent valuer must be undertaken in accordance with UKPS 2.3 of the RICS Valuation Standards (The Red Book) (6th edition published January 2008), or in the case of overseas immovables on an appropriate basis, but is subject to any provisions of the instrument constituting the scheme.

(3) In relation to immovables:
(a) any valuation under this rule has effect, until the next valuation under this rule, for the purposes of the value of immovables; and

(b) an agreement to transfer an immovable or an interest in an immovable is to be disregarded for the purpose of the valuation of the scheme property unless it reasonably appears to the authorised fund manager to be legally enforceable.

In considering whether a valuation of overseas immovables by the standing independent valuer is made on an appropriate basis for the purpose of COLL 8.4.13 R (2)(f), the authorised fund manager should consider whether that valuation was made in accordance with internationally accepted valuation principles, procedures and definitions as set out in the International Valuation Standards published by the International Valuation Standards Committee.
8.5 Powers and responsibilities

Application

This section applies to an ICVC which is a qualified investor scheme and the authorised fund manager any other directors of an ICVC and the depositary of a qualified investor scheme.

Functions of the authorised fund manager

8.5.1 FCA

(1) The authorised fund manager must manage the scheme in accordance with:
   (a) the instrument constituting the scheme;
   (b) the rules in this sourcebook;
   (c) the most recently published prospectus; and
   (d) for an ICVC, the OEIC Regulations.

(2) The authorised fund manager must carry out such functions as are necessary to ensure compliance with the rules in this sourcebook that impose obligations on the authorised fund manager or ICVC, as appropriate.

(3) The authorised fund manager must:
   (a) make decisions as to the constituents of the scheme property in accordance with the investment objectives and policy of the scheme;
   (b) instruct the depositary how rights attaching to the ownership of scheme property are to be exercised;
   (c) take action immediately to rectify any breach of the pricing methodology set out in the prospectus, which must (unless the authorised fund manager determines on reasonable grounds that the breach is of minimal significance) extend to payment of money:
      (i) by the authorised fund manager to unitholders and former unitholders;
      (ii) by the ACD to the ICVC;
(iii) by the ICVC to the ACD;
(iv) by the manager to the trustee; or
(v) by the trustee (for the account of the AUT) to the manager;
(d) ensure where relevant that the ICVC complies with the relevant obligations imposed by, and when appropriate, exercises the relevant powers provided under, the OEIC Regulations;
(e) maintain such records as are necessary to enable the authorised fund manager or the ICVC, as appropriate, to comply with and demonstrate compliance with the rules in this sourcebook and also in the case of an ICVC, the OEIC Regulations; and
(f) maintain for a period of six years a daily record of the units held, acquired or disposed of by the authorised fund manager including the classes of such units, and of the balance of any acquisitions and disposals.

Duties of the authorised fund manager: investment and borrowing powers

(1) An authorised fund manager may give instructions to deal in the scheme property.

(2) An authorised fund manager must avoid the scheme property being used or invested contrary to any provision in COLL 8.4 (Investment and borrowing powers).

(3) An authorised fund manager must immediately on becoming aware of any breach of COLL 8.4 take action, at its own expense, to rectify that breach.

(4) An authorised fund manager must take the action in (3) immediately, except in circumstances where doing so would not be in the best interests of unitholders, in which case the action must be taken as soon as such circumstances cease to apply.

(5) An authorised fund manager must not postpone taking action in accordance with (3) unless the depositary has given its consent.

Duties of the ACD: umbrella schemes

Where reasonable grounds exist for an ACD of an ICVC which is an umbrella to consider that a foreign law contract entered into by the ICVC may have become inconsistent with the principle of limited recourse stated in the instrument of incorporation of the ICVC (see COLL 8.2.6 R(2)(4A)) the ACD must:

(1) promptly investigate whether there is an inconsistency; and
(2) if the inconsistency still appears to exist, take appropriate steps to remedy that inconsistency.

In deciding what steps are appropriate to remedy the inconsistency, the ACD should have regard to the best interests of the unitholders. Appropriate steps to remedy the inconsistency may include:

(1) where possible, renegotiating the foreign law contract in a way that remedies the inconsistency; or

(2) causing the ICVC to exit the foreign law contract.

Duties of the depositary

(1) The depositary is responsible for the safekeeping of all the scheme property.

(2) The depositary must:

(a) take all steps to ensure that transactions properly entered into for the account of the scheme are completed;

(b) take all steps to ensure that instructions properly given by the authorised fund manager in respect of the exercise of rights related to scheme property are carried out;

(c) ensure that any scheme property in registered form is as soon as reasonably practicable registered in its name or that of its nominee or delegate, as appropriate;

(d) take into its custody or control all documents of title of the scheme property other than in respect of derivatives or forward transactions;

(e) ensure that any resulting benefit of a derivatives or forward transaction is received by itself in respect of the scheme;

(f) hold and deal with any income received in respect of the scheme property in accordance with Section 8.5.15 R (Income);

(g) take reasonable care to ensure that the scheme is managed by the authorised fund manager in accordance with:

(i) Section 8.4 (Investment and borrowing powers);

(ii) Section 8.5.9 R (Valuation, pricing and dealing); and

(iii) Section 8.5.15 R (Income);

(h) keep records so as to comply with the rules in this sourcebook and so as to demonstrate such compliance; and

(i) be responsible for any other duties as set out in the instrument constituting the scheme.
(3) If a relevant ICVC ceases to have any directors, the depositary may act in accordance with \[\text{\footnotesize COLL 6.5.6 R (ICVC without a director)}\].

Delegation

8.5.5 R

FCA

(1) The \textit{authorised fund manager} (or in addition any other \textit{director} in the case of an ICVC) may delegate any function to any \textit{person}.

(2) The \textit{depositary} has the power to delegate any function to anyone, including in the case of an ICVC a \textit{director}, to assist the \textit{depositary} to perform its functions, save that it must not retain the services of the \textit{authorised fund manager} or, in the case of an ICVC, any other \textit{director} to perform any part of its functions of safe custody of the \textit{scheme property}.

(3) Subject to any provisions of the \textit{OEIC Regulations}, the delegator in (1) and (2) will not be responsible under the \textit{rules} in \textit{COLL} for any act or omission of the delegate provided that the delegator can show:

(a) that it was reasonable for the delegator to obtain assistance to perform the function in question;

(b) that the delegate was and remained competent to provide that assistance; and

(c) that the delegator took reasonable care to ensure that the assistance was provided in a competent manner.

Delegation and responsibility for regulatory obligations

8.5.6 G

FCA

\textit{Directors} of an ICVC, \textit{authorised fund managers} and \textit{depositaries} should also have regard to \textit{\footnotesize SYSC 8} (Outsourcing). \textit{\footnotesize SYSC 8.1.6 R} states that a \textit{firm} remains fully responsible for discharging all of its obligations under the \textit{regulatory system} if it outsources crucial or important operational functions or any relevant services and activities.

Conflicts of interest

8.5.7 R

FCA

(1) The \textit{authorised fund manager} and the \textit{depositary} must ensure that any transaction in respect of the \textit{scheme property} undertaken with an \textit{affected person} is on terms at least as favourable to the \textit{scheme} as any comparable arrangement on normal commercial terms negotiated at arm's length with an independent third party.

(2) Paragraph (1) is subject to any provision in the \textit{instrument constituting the scheme} and the \textit{prospectus} imposing a prohibition in relation to any type of transaction.

The register of unitholders: AUTs

8.5.8 R

FCA

(1) The \textit{manager} or the \textit{trustee} (in accordance with their responsibilities as set out in the \textit{instrument constituting the scheme})
must maintain a register of unitholders as a document in accordance with this rule.

(2) The register must contain:

(a) the name and address of each unitholder (for joint unitholders no more than four need to be registered);

(b) the number of units (including fractions of a unit) of each class held by each unitholder; and

(c) the date on which the unitholder was registered in the register for the units standing in his name.

(3) The manager or the trustee (as appropriate) must take all reasonable steps and exercise all due diligence to ensure the register is kept complete and up to date.

(4) Where relevant, the manager must immediately notify the trustee of any information he receives which may affect the accuracy of any entry in the register.

Valuation, pricing and dealing

(1) The value of the scheme property is the net value of the scheme property after deducting any outstanding borrowings (including any capital outstanding on a mortgage of an immovable).

(2) Any part of the scheme property which is not an investment (save an immovable) must be valued at fair value.

(3) For the purposes of (2), any charges that were paid, or would be payable, on acquiring or disposing of the asset must be excluded from the value of that asset.

(4) The value of the scheme property of an authorised fund must, save as otherwise provided in this section, be determined in accordance with the provisions of the instrument constituting the scheme and the prospectus, as appropriate.

(4A) Where a scheme operates as a short-term money market fund, the value of the scheme property must be determined either on an amortised cost or mark to market basis.

(4B) Where a scheme operates as a money market fund, the value of the scheme property must be determined on a mark to market basis.

(5) Subject to (5A), the scheme must have a valuation point on each dealing day.
Where a scheme operates as a money market fund or a short-term money market fund which is marketed solely through employee savings schemes or to a specific category of investors that are subject to redemption restrictions, the scheme may have at least one valuation point every week.

The authorised fund manager must prepare a valuation in accordance with (4) for each relevant type of unit at each relevant valuation point.

The price of a unit must be calculated on the basis of the valuation in (6) in a manner that is fair and reasonable as between unitholders.

[deleted]

The authorised fund manager must publish in an appropriate manner the price of any type of unit based on the valuation carried out in accordance with (6).

The authorised fund manager must also provide on request to any unitholder at any time an estimated price for any type of unit in the scheme.

The period of any initial offer and how it should end must be set out in the prospectus and must not be of unreasonable length.

Maintaining the value of a short-term money market fund

The authorised fund manager of a short-term money market fund which values scheme property on an amortised cost basis must:

1. carry out a valuation of the scheme property on a mark to market basis at least once a week and at the same valuation point used to value the scheme property on an amortised cost basis; and

2. ensure that the value of the scheme property when valued on a mark to market basis, does not differ by more than 0.5% from the value of the scheme property when valued on an amortised cost basis.

[Note: paragraph 21 of CESR’s guidelines on a common definition of European money market funds]

The authorised fund manager should advise the depositary when the mark to market value of a short-term money market fund valuing scheme property on an amortised cost basis varies from its amortised cost value by 0.1%, 0.2% and 0.3% respectively. The authorised fund manager of a short-term money market fund should agree procedures with the depositary designed to stabilise the value of the scheme in these events.
Issues and cancellations of units

(1) The authorised fund manager must:

(a) ensure that at each valuation point there are at least as many units in issue of any class as there are units registered to unitholders of that class; and

(b) not do, or omit anything that would, or might confer on itself a benefit or advantage at the expense of a unitholder or potential unitholder.

(2) For the purposes of (1) the authorised fund manager may take into account sales and redemptions after the valuation point, provided it has systems and controls to ensure compliance with (1).

(3) The authorised fund manager must arrange for the issue and cancellation of units and pay money or assets to or from the depositary for the account of the scheme as required by the prospectus.

(4) The authorised fund manager must keep a record of issues and cancellations made under this rule.

(5) The authorised fund manager may arrange for the ICVC, or instruct the trustee to issue or cancel units where the authorised fund manager would otherwise be obliged to sell or redeem the units in the manner set out in the prospectus.

(6) Where the authorised fund manager has not complied with (1), it must correct the error as soon as possible and must reimburse the scheme any costs it may have incurred in correcting the position, subject to any reasonable minimum level for such reimbursement as set out in the prospectus.

Issue and cancellation of units in multiple classes

If a qualified investor scheme has two or more classes of unit in issue, the authorised fund manager may treat any or all of those classes as one for the purpose of determining the number of units to be issued or cancelled by reference to a particular valuation point, if:

(1) the depositary gives its prior agreement; and

(2) the relevant classes:

(a) have the same entitlement to participate in, and the same liability for charges, expenses and other payments that may be recovered from, the scheme property; or
(b) differ only as to whether income is distributed or accumulated by periodic credit to capital, provided the price of the units in each class is calculated by reference to undivided shares in the scheme property.

Sale and redemption

(1) The authorised fund manager must, at all times during the dealing day, be willing to effect the sale of units to any eligible investor (within any conditions in the instrument constituting the scheme and the prospectus which must be fair and reasonable as between all unitholders and potential unitholders) for whom the authorised fund manager does not have reasonable grounds to refuse such sale.

(2) The authorised fund manager must, at all times during the dealing day, effect a redemption on the request of any eligible unitholder (within any conditions in the instrument constituting the scheme and the prospectus) of units owned by that unitholder, unless the authorised fund manager has reasonable grounds to refuse such redemption.

(3) On agreeing to a redemption of units within (2), the authorised fund manager must pay the full proceeds of the redemption to the unitholder within any reasonable period specified in the instrument constituting the scheme or the prospectus, unless it has reasonable grounds for withholding payment.

(4) Payment of proceeds on redemption must be made by the authorised fund manager in any manner provided for in the prospectus which must be fair and reasonable as between redeeming unitholders and continuing unitholders.

Limited redemption periods

The maximum period between dealing days for a qualified investor scheme will depend on the reasonable expectations of the target investor group and the particular investment objectives and policy of the scheme. For instance, for a scheme aiming to invest in large property developments, the expectation would be that it is reasonable to have a much longer period between dealing days for liquidity reasons than for a scheme investing predominantly in listed securities.

Property Authorised Investment Funds

(1) The authorised fund manager of a property authorised investment fund must take reasonable steps to ensure that no body corporate holds more than 10% of the net asset value of that fund (the "maximum allowable").
(2) Where the *authorised fund manager* of a *property authorised investment fund* becomes aware that a *body corporate* holds more than the maximum allowable, he must:

(a) notify the *body corporate* of that event;
(b) not pay any income distribution to the *body corporate*; and
(c) redeem or cancel the *body corporate*’s holding down to the maximum allowable within a reasonable time-frame.

(3) For the purpose of (2)(c), a reasonable time-frame means the time-frame which the *authorised fund manager* reasonably considers to be appropriate having regard to the interests of the *unitholders* as a whole.

Reasonable steps to monitor the maximum allowable include:

1. regularly reviewing the register; and
2. taking reasonable steps to ensure that *unitholders* are kept informed of the requirement that no *body corporate* may hold more than 10% of the net asset value of a *property authorised investment fund*.

### Payments

(1) An ICVC must not incur any expense in respect of the use of any movable or immovable property unless the *scheme* is *dedicated* to such investment or such property is necessary for the direct pursuit of its business.

(2) Payments out of the *scheme property* may be made from *capital property* rather than from income, provided the basis for this is set out in the *prospectus*.

### Exemption from liability to account for profits

An *affected person* is not liable to account to another *affected person* or to the *unitholders of the scheme* for any profits or benefits it makes or receives that are made or derived from or in connection with:

1. dealings in the *units of a scheme*; or
2. any transaction in *scheme property*; or
3. the supply of services to the *scheme*;

where disclosure of the non-accountability has been made in the *prospectus* of the *scheme*. 

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**8.5.12B** *(FCA)*

**8.5.13** *(FCA)*

**8.5.14** *(FCA)*
(1) A qualified investor scheme must have:
   (a) an annual accounting period;
   (b) a half-yearly accounting period; and
   (c) an accounting reference date;
   the details of which must be set out in the prospectus.

(1A) COLL 6.8.2 R (2) to COLL 6.8.2 R (7) (Accounting periods) also apply to the half-yearly accounting period and annual accounting period of a qualified investor scheme.

(2) A qualified investor scheme must have an annual income allocation date, which must be within four months of the accounting reference date.

(3) A qualified investor scheme may have an interim income allocation date and interim accounting periods and if it does, the interim income allocation date must be within a reasonable period of the end of the relevant interim accounting period as set out in the prospectus.

(3A) COLL 6.8.3 R (3) (Income allocation and distribution) to COLL 6.8.3A G (Allocation of income to difference classes of unit) also apply to a qualified investor scheme.

(4) [deleted]

(5) [deleted]
   (a) [deleted]
   (b) [deleted]
   (c) [deleted]
8.6 Termination, suspension, and schemes of arrangement

Application

This section applies to:

(1) an authorised fund manager, the directors, and the depositary of a qualified investor scheme; and

(2) an ICVC which is a qualified investor scheme.

Termination

For a qualified investor scheme the provisions in COLL 7.3 to COLL 7.5 will apply as appropriate as if COLL 7 applied to qualified investor schemes.

Suspension

(1) The authorised fund manager may, with the prior agreement of the depositary, and must without delay, if the depositary so requires, within any parameters which are fair and reasonable in respect of all the unitholders in the scheme and which are set out in the prospectus, temporarily suspend dealings in units of the scheme, a sub-fund or a class.

(2) Any suspension within (1) must only be where the authorised fund manager has determined on reasonable grounds that there is good and sufficient reason in the interests of unitholders or potential unitholders and the authorised fund manager must have regard to the interests of all the unitholders in the scheme in reaching such an opinion.

(3) At the commencement of suspension under (1), the authorised fund manager must immediately inform the FCA of the suspension and the reasons for it.

(3A) The authorised fund manager must ensure that a notification of the suspension is made to unitholders of the authorised fund as soon as practicable after suspension commences.
(3B) The authorised fund manager and the depositary must ensure that the suspension only continues for as long as it is justified having regard to the interests of the unitholders.

(4) The suspension of dealings in units must cease, as soon as (2) no longer applies.

(4A) The authorised fund manager and the depositary must formally review the suspension at least every 28 days and inform the FCA of the results of this review and any change to the information provided in (3).

(5) The authorised fund manager must inform the FCA immediately of the resumption of dealings.

Schemes of arrangement

In relation to an ICVC or an AUT which is a qualified investor scheme, the provisions in COLL 7.6 (Schemes of arrangement) will apply as appropriate to the authorised fund manager, any other directors of the ICVC and the depositary as if COLL 7.6 applied to a qualified investor scheme and did not exclude unitholders becoming unitholders in another qualified investor scheme.
## Qualified Investor Schemes: eligible investors

This Annex belongs to COLL 8.1.3R

For the purposes of the rule on qualified investor schemes: eligible investors (COLL 8.1.3R) a firm must only record ownership of units in the register of a qualified investor scheme in accordance with the following table:

<table>
<thead>
<tr>
<th>Issue or transfer of units to:</th>
<th>Issue or transfer of units (see Note 1) in a qualified investor scheme which is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1 person</td>
<td>(1) that collective investment scheme; or</td>
</tr>
<tr>
<td>A person:</td>
<td>(2) any other collective investment scheme whose underlying property and risk profile are both 'substantially similar' (see Note 2) to those of that collective investment scheme; or</td>
</tr>
<tr>
<td>(1) who is already a participant in an unregulated collective investment scheme or a qualified investor scheme; or</td>
<td>(3) a collective investment scheme which is intended to absorb or take over the assets of that collective investment scheme; or</td>
</tr>
<tr>
<td>(2) who has been, in the last 30 months, a participant in an unregulated collective investment scheme or a qualified investor scheme.</td>
<td>(4) a collective investment scheme, units in which are being offered by its operator as an alternative to cash on the liquidation of that collective investment scheme.</td>
</tr>
</tbody>
</table>

| Category 2 person             | that collective investment scheme. |
| A person:                     | ----------------------------------|
| (1) for whom the authorised fund manager or an associate has taken reasonable steps to ensure that investment in the collective investment scheme is suitable; and | |
| (2) who is an 'established' or 'newly accepted' client of the authorised fund manager or of an associate (see Notes 3 & 4). | |
Category 3 person

A person who is eligible to participate in a scheme constituted under:

(1) the Church Funds Investment Measure 1958;

(2) section 96 of the Charities Act 2011; or

(3) section 25 of the Charities Act (Northern Ireland) 1964.

Category 4 person

An eligible employee, that is, a person who is:

(1) an officer;

(2) an employee;

(3) a former officer or employee; or

(4) a member of the immediate family of any of (1)-(3);

of an employer which is (or is in the same group as) the firm, or which has accepted responsibility for the activities of the firm in carrying out the designated investment business in question.

(1) A collective investment scheme of which the instrument constituting the scheme:

(a) restricts the scheme property, apart from cash and near cash, to:

(i) (where the employer is a company) shares in and debentures of the company or any other connected company (see Note 5);

(ii) (in any case), any property, provided that the scheme takes the form of a trust which the firm reasonably believes not to contain any risk that any eligible employee may be liable to make any further payments (other than charges) for investment transactions earlier entered into, which the eligible employee was not aware of at the time he entered into them; and

(b) (in a case falling within A(1) above) restricts participation in the scheme to eligible employees, the employer and any connected company.

(2) Any collective investment scheme provided that the participation of eligible employees is to facilitate their co-investment:

(a) with one or more companies in the same group as their employer (which may include the employer); and/or

(b) with one or more clients of such a company.
Any collective investment scheme.

### Category 5 person

An exempt person (other than a person exempted only by section 39 of the Act (Exemption of appointed representatives)) if the issue or transfer of units relates to a regulated activity in respect of which the person is exempt from the general prohibition.

### Category 6 person

An eligible counterparty or a professional client.

### Category 7 person

A person:

1. in relation to whom the authorised fund manager or an associate has undertaken an adequate assessment of his expertise, experience and knowledge and that assessment gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the person is capable of making his own investment decisions and understanding the risks involved;

2. to whom the authorised fund manager or an associate has given a clear written warning of the protections he may lose; and

3. who has stated in writing, in a separate document from the contract, that he is aware of the consequences of losing such protections.

The following Notes explain certain words and phrases used in the table above.

**Note 1** Issue or transfer of units to a category of person includes any nominee company acting for such a person.

**Note 2** The risk profile of a scheme will be substantially similar to that of another scheme only if there is such similarity in relation to both liquidity and volatility.

**Note 3** A person is an 'established client' of another person if he has been and remains an actual client of that person in relation to designated investment business done with or through that other person.

**Note 4** A person is a 'newly accepted' client of a firm if:
(1) a written agreement relating to designated investment business exists between the client and the firm (or, if the client is normally resident outside the United Kingdom, an oral or written agreement); and

(2) that agreement has been obtained without any contravention of any rule in COBS applying to the firm or (as far as the firm is reasonably aware) any other authorised person.

Note 5 A company is 'connected' with another company if:

(1) they are in the same group; or

(2) one company is entitled either alone or with another company in the same group, to exercise or control the exercise of a majority of the voting rights attributable to the share capital, which are exercisable in all circumstances at any general meeting of the other company or of its holding company.
Chapter 9

Recognised schemes
9.1 Application and general information

Application

This chapter applies to operators of recognised schemes and to operators of schemes making a notification in respect of them under Chapter V of Part XVII of the Act (Recognised overseas schemes).

Purpose

This chapter enables potential operators of recognised schemes to know what information and documents the FCA wish to receive to enable it to consider whether to recognise the scheme under the Act for marketing in the United Kingdom.

General information

Further information about notifications for recognition is contained in COLLG.
9.2 Section 264 recognised schemes

9.2.1
(1) [deleted]
(2) [deleted]
(3) [deleted]
(4) [deleted]

9.2.2
(1) The units of an EEA UCITS scheme in respect of which a notification has been transmitted to the FSA by the competent authority of the UCITS Home State in accordance with article 93 of the UCITS Directive may be marketed in the United Kingdom. This is the effect of section 264 (Schemes constituted in other EEA States) read in conjunction with section 238(4)(c) (Restrictions on promotion) of the Act.

(2) Where a management company wishes to market the units of an EEA UCITS scheme it manages, without establishing a branch or providing any other services in the United Kingdom, a management company passport is not required for such marketing activities.

(3) In this Chapter references to an EEA UCITS scheme include its sub-funds.

[Note: article 16(1) second paragraph, article 91(1) and 91(4) of the UCITS Directive]
9.3 Section 270 and 272 recognised schemes

Information and documents to be supplied for a section 270 notification or section 272 application

1) If the operator of a scheme gives notice to the FCA under section 270 of the Act (Schemes authorised in designated countries or territories) or makes an application under section 272 of the Act (Individually recognised overseas schemes), the notice or application must include the information in paragraph (4).

2) The documents must be in English or accompanied by a translation in English.

3) The documents must be certified by the operator to be true copies of the originals.

4) The operator of the scheme must provide the following information and documents with the notification or application:
   (a) the name of the scheme;
   (b) the legal form of the scheme;
   (c) the name and address of the operator;
   (d) the address of the place in the United Kingdom for service on the operator of notices or other documents;
   (e) whether the operator intends to market the scheme in the United Kingdom in a manner which will involve it carrying on a regulated activity in the United Kingdom;
   (f) the name and address of any person to whom the property subject to the scheme is entrusted for safekeeping;
   (g) the address of the place in the United Kingdom where scheme facilities (see COLL 9.4) will be maintained;
   (h) details of the arrangements for the marketing of units in the United Kingdom, namely:
      (i) the proposed commencement date;
      (ii) whether the units will be sold by or through any employed sales force, authorised persons, or unsolicited calls;
   (i) a copy of the instrument constituting the scheme;
(j) a copy of the prospectus or any similar document giving details of the scheme;

(k) a copy of the latest annual report and any subsequent half-yearly report;

(l) a copy of any other document affecting the rights of participants in the scheme; and

(m) for notifications under section 270 only, a copy of the authorisation document issued by the authority in the designated territory confirming that the scheme is of a class covered by the designation order.

Additional information required in the prospectus for an application under section 272

An operator of a scheme recognised under section 272 of the Act must ensure the prospectus:

(1) contains a statement that "Complaints about the operation of the scheme may be made to the FCA."; and

(2) states whether or not investors in the scheme would be covered by the compensation scheme, and if so, it must state how they are covered and who they would need to contact for further information.

Preparation and maintenance of prospectus

(1) An operator of a scheme which is a recognised scheme by virtue of section 270 or 272 of the Act must comply, subject to paragraph (2) below, with the requirements set out in COLL 4.2 (Pre-sale notifications).

(2) Where a scheme recognised under section 270 of the Act is managed and authorised in Guernsey, Jersey, or the Isle of Man, the prospectus need not comply with the requirements of COLL 4.2.5 R(Table: contents of prospectus), providing it contains corresponding matter required under the law in its home territory.
9.4 Facilities in the United Kingdom

General

9.4.1 FCA

(1) The operator of a recognised scheme under section 264, section 270 or section 272 of the Act must maintain facilities in the United Kingdom in order to satisfy the requirements of COLL 9.4.2 R to COLL 9.4.6 R.

(2) In this section, a facility is a place of business that complies with COLL 9.4.6 R (Place of facilities).

Documents

9.4.2 FCA

(1) The operator of a recognised scheme must maintain facilities in the United Kingdom for any person, for inspection (free of charge) and for the obtaining (free of charge, in the case of the documents at (c) and (d), and otherwise at no more than a reasonable charge) of copies in English of:

(a) the instrument constituting the scheme;

(b) any instrument amending the instrument constituting the scheme;

(c) the latest prospectus (which must include the address where the facilities are maintained and details of those facilities);

(d) for a section 264 recognised scheme, the EEA key investor information document; and

(e) the latest annual and half-yearly reports.

(1A) For a section 264 recognised scheme, the requirement in (1) for documents to be in English applies only to the EEA key investor information document referred to in (1)(d).

(2) In relation to notices and documents sent by operators and depositaries to and from the United Kingdom, COLL 4.4.12 R (Notice to unitholders) and COLL 4.4.13 R (Other notices) apply.
9.4.3 FCA

**Price and redemption**

(1) The *operator* must maintain facilities in the United Kingdom for **any person** where:

   (a) information in English can be obtained about **prices of units** in the *scheme*; and

   (b) a *participant* may **redeem** or arrange for **redemption of units** in the *scheme* and obtain payment.

(2) An *operator* is treated as complying with paragraph (1) if it ensures **participants** may sell their **units** on an investment exchange at a price not significantly different from net asset value; and if so, must inform **participants** of the investment exchange.

9.4.4 FCA

**Bearer certificates and characteristics of units in the scheme**

(1) The *operator* must maintain facilities in the United Kingdom at which the **unitholder of a bearer certificate** may obtain **free of charge**:

   (a) payment of dividends; and

   (b) details or copies of any notices which have been given or sent to **participants** in the *scheme*.

(2) The *operator* must state:

   (a) the nature of the right represented by the **units** in the *scheme*; and

   (b) whether **persons** other than **unitholders** can vote at meetings of **unitholders** and, if so, who those **persons** are.

9.4.5 FCA

**Complaints**

The *operator* must maintain facilities in the United Kingdom, at which **any person** who has a complaint to make about the operation of the *scheme* can submit his complaint for transmission to the *operator*.

9.4.6 FCA

**Place of facilities**

(1) The address of the facilities maintained by the *operator* in accordance with this section and the details of the facilities so maintained must be stated in the *prospectus* of the *scheme*.

(2) The address of the facilities referred to in (1) must be the address of the *operator's principal place of business* in the United Kingdom, or, if there is no such address, the alternative address in paragraph (3).

(3) The alternative address is such convenient address as the *operator* determines, except that, in the case of a *scheme* recognised under...
section 272 of the Act where the operator is not an authorised person, the alternative address is to be the principal place of business in the United Kingdom of the authorised person who is the representative of the operator.
Chapter 10

Fees
10.1 The provisions in relation to fees for collective investments schemes are set out in FEES 1, 2, 3 and 4

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10.2 The provisions in relation to fees for collective investments schemes are set out in FEES 1, 2, 3 and 4

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Section 10.3: The provisions in relation to fees for collective investments schemes are set out in FEES 1, 2, 3 and 4

10.3

The provisions in relation to fees for collective investments schemes are set out in FEES 1, 2, 3 and 4

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Chapter 11

Master-feeder arrangements under the UCITS Directive
11.1 Introduction

Application

This chapter applies to:

(1) an *authorised fund manager* of an AUT or an ICVC;

(2) any other *director* of an ICVC;

(3) an ICVC; and

(4) a *trustee* of an AUT or a *depositary* of an ICVC;

where such AUT or ICVC is a *UCITS scheme* that is a *feeder UCITS* or a *master UCITS* in accordance with 11.1.2 R (Table of application).

Table of application

This table belongs to 11.1.1 R

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<th>Reference</th>
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Note 1: "x" means "applies", but not every paragraph in every provision referred to will necessarily apply.

Note 2: COLL 11.5 (with the exception of COLL 11.5.6 R) applies to auditors.

Purpose

(1) This chapter sets out:
(a) the notification requirements for a UCITS scheme to be approved as a feeder UCITS under section 283A (Master-feeder structures) of the Act; and

(b) the requirements which apply to a feeder UCITS where its master UCITS is wound up, merges with another UCITS or is divided into one or more UCITS.

(2) This chapter also ensures there is a flow of information and documents between a feeder UCITS and its master UCITS. In particular, it allows the authorised fund manager, depositary and auditor of a feeder UCITS to obtain all information and documents necessary to perform their functions.

(3) COLL 11.5 (Auditors) also imposes requirements on auditors of a master UCITS and a feeder UCITS.

(4) In this section references to:

(a) a UCITS scheme, a feeder UCITS, a master UCITS, or EEA UCITS scheme include the sub-fund of any such scheme and references to winding up a scheme are to be read as also applying to the termination of a sub-fund; and

(b) the management company of an EEA UCITS scheme are to the operator of the scheme.
11.2 Approval of a feeder UCITS

Explanation

(1) Section 283A(1) (Master-feeder structures) of the Act, in implementation of article 59(1) of the UCITS Directive, provides that the operator of a UCITS scheme may not invest a higher proportion of scheme property in units of another UCITS than is permitted by rules made by the FCA implementing article 55 of the UCITS Directive, unless the investment is approved by the FCA in accordance with that section.

(2) The FCA has implemented article 55(1) of the UCITS Directive in COLL 5.2.11 R (9), which provides that not more than 20% in value of a scheme is to consist of the units of any one collective investment scheme.

Application for approval of an investment in a master UCITS

(1) An application for approval of an investment in a master UCITS under section 283A of the Act must be accompanied by the following documents:

(a) the instrument constituting the scheme of the feeder UCITS and of the master UCITS;

(b) the prospectus and the key investor information referred to in COLL 4.7.2 R (Key investor information) of the feeder UCITS and of the master UCITS;

(c) the master-feeder agreement or the internal conduct of business rules in accordance with COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules);

(d) where applicable, the information to be provided to unitholders in accordance with COLL 4.8.3 R (Information to be provided to unitholders);

(e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement in accordance with COLL 11.4.1R (2) (Information-sharing agreement between depositaries); and

(f) if the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement in accordance.
(2) Where the master UCITS is an EEA UCITS scheme, the application for approval must also be accompanied by an attestation by the master UCITS’s Home State regulator that the master UCITS:

(a) is an EEA UCITS scheme or a sub-fund of it; and

(b) fulfils the conditions set out in article 58(3)(b) and (c) of the UCITS Directive.

(3) The documents referred to in (1) and (2) must be provided in English.

[Note: article 59(3) of the UCITS Directive]
**11.3 Co-ordination and information exchange for master and feeder UCITS**

**Authorised fund manager of a master UCITS: provision of documentation**

The *authorised fund manager* of a *UCITS scheme* that is a *master UCITS* must provide the *management company* of its *feeder UCITS* with all *documents* and information necessary for the latter to meet its regulatory obligations under the *UCITS Directive*.

[Note: article 60(1) first paragraph first sentence of the *UCITS Directive*]

**Master-feeder agreement and internal conduct of business rules**

1. The *authorised fund manager* of a *UCITS scheme* that is a *feeder UCITS* must enter into a *master-feeder agreement* which, at a minimum, complies with **COLL 11 Annex 1 R**.

2. Where a *master UCITS* and a *feeder UCITS* are managed by the same *management company*, the *master-feeder agreement* may be replaced by internal conduct of business rules which, at a minimum, comply with **COLL 11 Annex 2 R**.

3. The *authorised fund manager* of a *feeder UCITS* must not invest in *units* of the *master UCITS* in excess of the limit applicable under **COLL 5.2.11 R (9) (Spread: general) (20%)** until the period of 30 calendar days referred to in **COLL 4.8.3 R (1) (Information to be provided to unitholders)** has elapsed and the following have become effective:
   (a) the *master-feeder agreement*, or, if applicable under (2), the internal conduct of business rules;
   (b) the information-sharing agreement of the *depositaries* in accordance with **COLL 11.4.1R (2) (Information-sharing agreement between depositaries)**; and
   (c) the information-sharing agreement of the auditors in accordance with **COLL 11.5.1 R (Information-sharing agreement between auditors)**.

4. An *authorised fund manager* of a *feeder UCITS* must make a copy of the *master-feeder agreement* or, where applicable, the internal
conduct of business rules, available to unitholders free of charge on their request.

[Note: article 60(1) first paragraph last sentence, second and third paragraphs, article 61(1) second paragraph, article 62(1) second paragraph and article 64 third paragraph of the UCITS Directive]

Where an authorised fund manager of a feeder UCITS enters into a master-feeder agreement or, if applicable, internal conduct of business rules, with the management company of an EEA UCITS scheme, references in COLL 11 Annex 1 R and COLL 11 Annex 2 R to COLL rules implementing provisions in the UCITS Directive which are the responsibility of the EEA UCITS scheme’s Home State regulator should be read as referring to the corresponding provisions in the laws and regulations of that EEA State.

[Note: recital (8) to the UCITS implementing Directive No 2]

Law applicable to the master-feeder agreement

(1) Where the feeder UCITS and the master UCITS are UCITS schemes, the master-feeder agreement must provide that the law of a specified part of the United Kingdom applies to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that part of the United Kingdom.

(2) Where the feeder UCITS and the master UCITS are established in different EEA States, the master-feeder agreement must provide that the applicable law shall be either:

(a) the law of the EEA State in which the feeder UCITS is established; or
(b) the law of the EEA State in which the master UCITS is established;

and that both parties agree to the exclusive jurisdiction of the courts of the EEA State whose law they have stipulated to be applicable to the agreement.

[Note: article 14 of the UCITS implementing Directive No 2]

Avoidance of opportunities for market timing

(1) The authorised fund managers of a master UCITS and its feeder UCITS must take appropriate measures to co-ordinate the timing of their net asset value calculation and publication, including
the publication of dealing prices, in order to avoid market timing in their units, preventing arbitrage opportunities.

(2) Where either the master UCITS or feeder UCITS is an EEA UCITS scheme managed by an EEA UCITS management company, the authorised fund manager must co-ordinate with that management company.

[Note: article 60(2) of the UCITS Directive]

Obligations of the feeder UCITS

(1) An authorised fund manager of a feeder UCITS must monitor effectively the activity of the master UCITS.

(2) In performing this obligation, the authorised fund manager of the feeder UCITS may rely on information and documents received from the master UCITS, or where applicable, the master UCITS' management company, depositary or auditor, unless there is a reason for doubting their accuracy.

[Note: article 65(1) of the UCITS Directive]

Inducements

Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by:

(1) a feeder UCITS; or

(2) an authorised fund manager of a feeder UCITS; or

(3) any person acting on behalf of (1) or (2);

that fee, commission or other monetary benefit must be paid into the scheme property of the feeder UCITS.

[Note: article 65(2) of the UCITS Directive]

Obligations of the master UCITS

The authorised fund manager of a master UCITS must immediately inform the FCA of the identity of each feeder UCITS which invests in its units.

[Note: article 66(1) first sentence of the UCITS Directive]

Where the FCA is informed in accordance with COLL 11.9 R that a feeder UCITS which is an EEA UCITS scheme has invested in units of the master UCITS, section 261A (Information for home state regulator) of the Act and regulation 29A (Information for home state regulator) of the OEIC Regulations require the FCA to inform the Home State regulator of the feeder UCITS immediately.

[Note: article 66(1) second sentence of the UCITS Directive]
11.3.11

(1) An authorised fund manager of a master UCITS must not impose any preliminary charge or redemption charge on the feeder UCITS for the issue, sale, redemption or cancellation of units in the master UCITS.

(2) Where the authorised fund manager of a master UCITS requires any addition to or deduction from the consideration paid on the acquisition or disposal of units by a feeder UCITS which is, or is like, a dilution levy made in accordance with COLL 6.3.8 R (Dilution) or SDRT provision made in accordance with COLL 6.3.7 R (SDRT provision), it is to be treated as part of the price of the units and not as part of any charge.

[Note: article 66(2) of the UCITS Directive]

11.3.12

An authorised fund manager of a master UCITS must ensure the timely availability of all information that is required in accordance with its obligations under the regulatory system, the general law and the instrument constituting the scheme, to:

(1) the feeder UCITS (or where applicable its management company);

(2) the competent authority of the feeder UCITS;

(3) the depositary of the feeder UCITS; and

(4) the auditor of the feeder UCITS.

[Note: article 66(3) of the UCITS Directive]

Obligations to unitholders of a master UCITS

The authorised fund manager of a UCITS scheme that operates, or intends to operate, as a master UCITS must:

(1) not enter into a master-feeder agreement or, where applicable, internal conduct of business rules in accordance with COLL 11.3.2R (2) unless it is satisfied on reasonable grounds that the arrangements with the feeder UCITS will not unfairly prejudice the interests of any other unitholder or class of unitholders in the master UCITS;

(2) consider, in relation to:

(a) each item of information it makes available to the feeder UCITS or its management company; and

(b) each matter notified by the depositary of the master UCITS in accordance with COLL 11.4.3 R (Notification of irregularities);
whether it would unfairly prejudice the interests of those unitholders in the master UCITS other than the feeder UCITS by not making that information available to them, or by not informing them of that matter at the same time in an appropriate manner; and

(3) in relation to any matter within (2)(b) where it does not notify other unitholders at the same time:

(a) record the grounds for determining that the interests of those unitholders are not unfairly prejudiced by its decision; and

(b) inform all unitholders of that matter in an appropriate manner and timescale.

(1) The appropriate manner and timescale of notification referred to in COLL 11.3.13R (2) and (3)(b) will depend on the nature and significance of the matter. Consequently, the authorised fund manager will need to assess each matter individually.

(2) An appropriate manner of notification could include sending an immediate notification to the unitholders, or arranging for the information to be published on one or more websites where it is reasonable likely to be seen by investors.

(3) Where COLL 11.3.13R (3)(b) applies, it might be appropriate to include the information in the next long report of the scheme.
11.4 Depositaries

Information-sharing agreement between depositaries

(1) An authorised fund manager of a feeder UCITS is responsible for communicating to the depositary of the scheme any information about the master UCITS which is required for the completion of the depositary’s regulatory obligations.

(2) Where a master UCITS and its feeder UCITS have different depositaries, the depositaries must enter into an information-sharing agreement in order to ensure fulfilment of their respective duties.

[Note: article 61(1) first and fourth paragraphs of the UCITS Directive]

Contents of the information-sharing agreement between depositaries

(1) The information-sharing agreement referred to in COLL 11.4.1R (2) must include:

(a) identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether that information or those documents are provided by one depositary to the other or made available on request;

(b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

(c) the co-ordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:

(i) the procedure for calculating the net asset value of each scheme, including any measures appropriate to protect against the activities of market timing in accordance with COLL 11.3.6 R (Avoidance of opportunities for market timing);

(ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or...
redemption of units in the master UCITS, and the settlement of those transactions, including any arrangement to transfer assets in kind;

(d) the co-ordination of accounting year-end procedures;

(e) what details the depositary of the master UCITS must provide to the depositary of the feeder UCITS of breaches by the master UCITS of the law and the instrument constituting the scheme and how and when those details will be provided;

(f) the procedure for handling ad hoc requests for assistance from one depositary to the other; and

(g) identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and how and when this will be done.

(2) Where a master-feeder agreement exists in accordance with COLL 11.3.2R (1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the depositaries must provide that:

(a) the law of the EEA State applying to the master-feeder agreement will also apply to the information-sharing agreement; and

(b) both depositaries agree to the exclusive jurisdiction of the courts of that EEA State.

(3) Where the master-feeder agreement has been replaced by internal conduct of business rules in accordance with COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the depositaries must provide that:

(a) the law applying to the information-sharing agreement shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and

(b) both depositaries agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

[Note: articles 24 and 25 of the UCITS implementing Directive No 2]

Notification of irregularities

(1) Where a depositary of a master UCITS detects any irregularities with regards to the scheme which may have a negative impact on the relevant feeder UCITS, the depositary must immediately inform:
(a) the FCA;
(b) the feeder UCITS or, where applicable, its management company; and
(c) the depositary of the feeder UCITS.

(2) The irregularities referred to in (1) include, but are not limited to:

(a) errors in the valuation of the scheme property performed in accordance with COLL 6.3.3 R (Valuation);
(b) errors in transactions for or settlement of the sale, issue, repurchase or redemption of units in the scheme undertaken by the feeder UCITS;
(c) errors in the payment or capitalisation of income arising from the scheme property, or in the calculation of any related withholding tax;
(d) breaches of the investment objectives, policy or strategy of the scheme as described in the instrument constituting the scheme, the prospectus or the key investor information; and
(e) breaches of investment and borrowing limits set out in COLL, the instrument constituting the scheme, the prospectus or the key investor information.

[Note: article 61(2) of the UCITS Directive and article 26 of the UCITS implementing Directive No 2]

11.4.4

11.4.5

Disclosure by a trustee or depositary

Section 351A (Disclosure under the UCITS directive) of the Act provides that where a trustee of an AUT which is a master UCITS or a feeder UCITS, or any person acting on their behalf, makes a disclosure to comply with rules implementing Chapter VIII of the UCITS Directive, that disclosure is not to be taken as a contravention of any duty to which the person making the disclosure is subject. The OEIC Regulations (see regulation 83A) contain corresponding provisions for the depositaries of ICVCs that are feeder UCITS and master UCITS.
11.5 Auditors

Information-sharing agreement between auditors

Where a master UCITS and a feeder UCITS have different auditors, those auditors must enter into an information-sharing agreement in order to ensure the fulfilment of their respective duties, including the arrangements taken to comply with COLL 11.5.3 R and COLL 11.5.4 R (Preparation of the audit report).

[Note: article 62(1) first paragraph of the UCITS Directive]

Contents of the information-sharing agreement between auditors

11.5.2 (1) The information-sharing agreement referred to in COLL 11.5.1 R must include:

(a) identification of the documents and categories of information which are to be routinely shared between both auditors;

(b) whether the information or documents referred to in (a) are to be provided by one auditor to the other or made available on request;

(c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;

(d) the co-ordination of the involvement of each auditor in the accounting year-end procedures for their respective scheme;

(e) identification of matters that must be treated as irregularities and disclosed in the audit report for the master UCITS for the purposes of COLL 11.5.3R (2);

(f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report for the master UCITS; and

(g) provisions regarding the preparation of the audit reports referred to in COLL 11.5.3 R and COLL 4.5.12 R (Report of the auditor) and the manner and timing for the provision of
the audit report for the master UCITS (and drafts of it) to the auditor of the feeder UCITS.

(2) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the information-sharing agreement must include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report as required by COLL 11.5.4 R and to provide it (and drafts of it) to the auditor of the feeder UCITS.

(3) Where a master-feeder agreement exists in accordance with COLL 11.3.2R (1) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that:

(a) the law of the EEA State applying to the master-feeder agreement will also apply to the information-sharing agreement between auditors; and

(b) both auditors agree to the exclusive jurisdiction of the courts of that EEA State.

(4) Where the master-feeder agreement has been replaced by internal conduct of business rules in accordance with COLL 11.3.2R (2) (Master-feeder agreement and internal conduct of business rules), the information-sharing agreement between the auditors must provide that:

(a) the law applying to the information-sharing agreement shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and

(b) both auditors agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

[Note: articles 27 and 28 of the UCITS implementing Directive No 2]

Preparation of the audit report

When preparing its audit report, the auditor of a feeder UCITS must:

(1) take into account the audit report of the master UCITS; and

(2) report on any irregularities revealed in the audit report of the master UCITS and their impact on the feeder UCITS.

[Note: article 62(2) first paragraph first sentence and second paragraph of the UCITS Directive]
Where a master UCITS and one or more of its feeder UCITS have different accounting years, the auditor of the master UCITS must make an ad hoc report on the closing date of the accounting year of each feeder UCITS.

[Note: article 62(2) first paragraph second sentence of the UCITS Directive]

Disclosure by an auditor

Section 351A of the Act provides that where an auditor of an AUT which is a master UCITS or a feeder UCITS, or any person acting on their behalf, makes a disclosure to comply with rules implementing Chapter VIII of the UCITS Directive, that disclosure is not to be taken as a contravention of any duty to which the person making the disclosure is subject. The OEIC Regulations (see regulation 83A) contain corresponding provisions for auditors of ICVCs that are feeder UCITS and master UCITS.

Responsibility of authorised fund managers

The authorised fund managers of a master UCITS and a feeder UCITS must ensure that the terms on which auditors of their respective schemes are appointed require each auditor to comply with the rules in this section.
11.6 Winding up, merger and division of master UCITS

Explanation

(1) Section 258A(1) and (2) (Winding up or merger of master UCITS) of the Act, in implementation of article 60 of the UCITS Directive, provides that where a master UCITS is wound up, for whatever reason, the FCA is to direct the manager and trustee of any AUT which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

(a) the FCA approves under section 283A (Master-feeder structures) of the Act the investment by the feeder UCITS of at least 85% in value of the scheme property in units of another master UCITS; or

(b) the FCA approves under section 252A (Proposal to convert to a non-feeder UCITS) of the Act an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS scheme which is not a feeder UCITS.

(2) Section 258A(3) and (4) of the Act further provides that where a master UCITS merges with another UCITS or is divided into two or more UCITS, the FCA is to direct the manager and trustee of any AUT which is a feeder UCITS of the master UCITS to wind up the scheme, unless one of the following conditions is satisfied:

(a) the FCA approves under section 283A of the Act the investment by the feeder UCITS of at least 85% in value of the scheme property in units of:

(i) the master UCITS which results from the merger;

(ii) one of the UCITS resulting from the division; or

(iii) another UCITS or master UCITS; or

(b) the FCA approves under section 252A of the Act an amendment of the trust deed of the feeder UCITS which would enable it to convert into a UCITS scheme which is not a feeder UCITS.

(3) The OEIC Regulations (see regulations 33A and 33B respectively) contain corresponding provisions for feeder UCITS which are structured as ICVCs.
11.6.2 FCA

Winding up and liquidation of master UCITS: Time limit within which a master UCITS is to be wound up pursuant to FCA direction

(1) The commencement of winding up of a UCITS scheme that is a master UCITS must take place no sooner than 3 months after a notification is made to its unitholders and, where applicable, the competent authorities of the feeder UCITS Home State, informing them of the binding decision to wind up the master UCITS.

(2) Paragraph (1) is without prejudice to any provision of the insolvency legislation in force in the United Kingdom regarding the compulsory liquidation of AUTs or ICVCs.

[Note: article 60(4) last sentence of the UCITS Directive]

11.6.3 FCA

Application for approval by a feeder UCITS where a master UCITS is wound up

Where the authorised fund manager of a UCITS scheme that is a feeder UCITS is notified that its master UCITS is to be wound up, it must submit to the FCA the following:

(1) where the authorised fund manager of the feeder UCITS intends to invest at least 85% in value of the scheme property in units of another master UCITS:

(a) its application for approval under section 283A of the Act for that investment;

(b) where applicable, its notice under section 251 (Alteration of schemes and changes of manager or trustee) of the Act or regulation 21 (The Authority’s approval for certain changes in respect of a company) of the OEIC Regulations of any proposed amendments to its instrument constituting the scheme;

(c) the amendments to its prospectus and its key investor information in accordance with COLL 4.2.3 R (1)(b) (Provision and filing of the prospectus) and COLL 4.7.7 R (1) (Revision and filing of key investor information); and

(d) the other documents required in accordance with COLL 11.2.2 R (Application for approval of an investment in a master UCITS);

(2) where the authorised fund manager of the feeder UCITS intends to convert it into a UCITS scheme that is not a feeder UCITS:

(a) its application for approval under section 252A of the Act or regulation 22A of the OEIC Regulations of the proposed amendments to its instrument constituting the scheme; and
(b) the amendments to its prospectus and its key investor information in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1); and

(3) where the authorised fund manager of the feeder UCITS intends to wind up the scheme, a notice under section 251 of the Act or regulation 21 of the OEIC Regulations of a proposal to that effect.

[Note: article 20(1) of the UCITS implementing Directive No 2]

Timing of applications for approval: winding up of a master UCITS

(1) The information in ■ COLL 11.6.3 R must be submitted no later than two months after the date on which the master UCITS has informed the authorised fund manager of the feeder UCITS of the binding decision to be wound up.

(2) By way of derogation from (1), where the master UCITS has informed the authorised fund manager of the feeder UCITS of the binding decision to be wound up more than five months before the date at which the winding up will start, the authorised fund manager must submit the information to the FCA at the latest three months before the day the winding up will start.

[Note: article 20(1) first sentence and article 20(2) of the UCITS implementing Directive No 2]

Application for approval by a feeder UCITS where a master UCITS merges or divides

Where the authorised fund manager of a UCITS scheme that is a feeder UCITS is notified that the master UCITS is to merge with another UCITS scheme or EEA UCITS scheme or divide into two or more such schemes, it must submit to the FCA the following:

(1) where the authorised fund manager of the feeder UCITS intends it to continue to be a feeder UCITS of the same master UCITS:
   (a) its application under section 283A of the Act, for approval;
   (b) where applicable, a notice under section 251 of the Act or regulation 21 of the OEIC Regulations of any proposed amendments to the instrument constituting the scheme; and
   (c) where applicable, the amendments to its prospectus and its key investor information in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1);

(2) where the authorised fund manager of the feeder UCITS intends it to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS, or
intends the feeder UCITS to invest at least 85% in value of the scheme property in units of another master UCITS not resulting from the merger or division:

(a) its application under section 283A of the Act for approval of that investment;

(b) where applicable, a notice under section 251 of the Act or regulation 21 of the OEIC Regulations of any proposed amendments to the instrument constituting the scheme;

(c) the amendments to its prospectus and its key investor information in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1);

(d) the other documents required in accordance with ■ COLL 11.2.2 R;

(3) where the authorised fund manager of the feeder UCITS intends it to convert into a UCITS scheme that is not a feeder UCITS:

(a) its application for approval under section 252A of the Act or regulation 22A of the OEIC Regulations of the proposed amendments to the instrument constituting the scheme; and

(b) the amendments to its prospectus and its key investor information in accordance with ■ COLL 4.2.3 R (1)(b) and ■ COLL 4.7.7 R (1); and

(4) where the authorised fund manager of the feeder UCITS intends to wind up the scheme, a notice under section 251 of the Act or regulation 21 of the OEIC Regulations of a proposal to that effect.

[Note: article 22(1) of the UCITS implementing Directive No 2]

Interpretation of COLL 11.6.5R

11.6.6 R

(1) For the purposes of ■ COLL 11.6.5R (1), a feeder UCITS will be considered as continuing to be a feeder UCITS of the same master UCITS where:

(a) the master UCITS is the receiving UCITS in a proposed UCITS merger; or

(b) the master UCITS is to continue materially unchanged as one of the resulting UCITS schemes or EEA UCITS schemes in a proposed division.

(2) For the purposes of ■ COLL 11.6.5R (2), a feeder UCITS will be considered as becoming a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS where:
(a) the master UCITS is the merging UCITS and, as a result of the UCITS merger, the feeder UCITS becomes a unitholder of the receiving UCITS; or

(b) the feeder UCITS as a result of the division becomes a unitholder of a UCITS scheme or EEA UCITS scheme that is materially different to the master UCITS.

[Note: article 22(2) of the UCITS implementing Directive No 2]

Timing of applications for approval: merger or division of a master UCITS

11.6.7

FCA

1. The information in ■ COLL 11.6.5 R must be submitted to the FCA no later than one month after the date on which the authorised fund manager of the feeder UCITS has received the information of the planned merger or division in accordance with regulation 13(6) of the UCITS Regulations 2011.

2. By way of derogation from (1), where the master UCITS provides the information referred to in, or comparable with, ■ COLL 7.7.10 R (Information to be given to unitholders) to the authorised fund manager of the feeder UCITS more than four months before the proposed effective date of the merger or division of the master UCITS, the authorised fund manager must submit the information to the FCA at least three months before the proposed effective date.

[Note: article 22(1) first sentence and article 22(3) of the UCITS implementing Directive No 2]

Repurchase or redemption of units in a master UCITS

11.6.8

FCA

Regulation 12(4) (Right of redemption) of the UCITS Regulations 2011 provides that where a master UCITS merges with another scheme, the master UCITS must enable its feeder UCITS to repurchase or redeem all the units of the master UCITS in which they have invested before the consequences of the merger become effective, unless the FCA approves the continued investment by the feeder UCITS in a master UCITS resulting from the merger.

11.6.9

FCA

(1) Where:

(a) the authorised fund manager of a feeder UCITS has submitted the documents required under ■ COLL 11.6.5R (2) and ■ (3) ; and

(b) does not receive the necessary approvals from the FCA by the business day preceding the last day on which the authorised fund manager of the feeder UCITS can request repurchase or redemption of its units in the master UCITS;

the authorised fund manager of the feeder UCITS must exercise the right to repurchase or redeem its units in the
master UCITS under regulation 12(4) of the UCITS Regulations 2011.

(2) The authorised fund manager of the feeder UCITS must also exercise the right in (1) to ensure that the right of its own unitholders to request repurchase or redemption in the feeder UCITS in accordance with COLL 4.8.3 R (1)(d) (Information to be provided to unitholders) is not affected.

(3) Before exercising the right in (1), the authorised fund manager of the feeder UCITS must consider any available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unitholders.

(4) Where the authorised fund manager of the feeder UCITS requests repurchase or redemption in accordance with (1), it must receive one of the following:

(a) the repurchase or redemption proceeds in cash; or

(b) some or all of the repurchase or redemption proceeds as a transfer in kind, where the authorised fund manager of the feeder UCITS so wishes and where its instrument constituting the scheme and the master-feeder agreement provide for it.

(5) Where (4)(b) applies, the authorised fund manager of the feeder UCITS may realise any part of the transferred assets for cash at any time.

[Note: articles 23(4) and 23(5) of the UCITS implementing Directive No 2]

Conditions on reinvestment of cash

Where:

(1) the FCA approves an application under sections 283A (Master-feeder structures) or 252A (Proposal to convert to a non-feeder UCITS) of the Act or regulation 22A of the OEIC Regulations that arises as a result of the winding-up, merger or division of the master UCITS (other than an application pursuant to COLL 11.6.5R (1)); and

(2) the authorised fund manager of the feeder UCITS holds or receives cash in accordance with COLL 11.6.9R (4) or as a result of a winding-up;

the authorised fund manager may not re-invest that cash, except for the purpose of efficient cash management, before the date on which the feeder UCITS invests in units of the master UCITS in accordance with COLL 11.3.2R (3) (Master-feeder agreement and internal conduct of business rules) or in accordance with its new investment objectives and policy.
[Note: article 23(6) of the UCITS implementing Directive No 2]

COLL 11.6.10 R gives effect to sections 283A(4) and 252A(8) of the Act and regulation 22A(4) of the OEIC Regulations which require the FCA to impose certain conditions when approving the re-investment of cash received from a master UCITS which has been wound up.

Requirements following approval by the FCA

Where the authorised fund manager of a feeder UCITS has submitted the documents required under COLL 11.6.3R (1), COLL 11.6.3R (2), COLL 11.6.5R (1), COLL 11.6.5R (2) or COLL 11.6.5R (3) and has received written notice of any required approvals from the FCA, it must:

1. inform the master UCITS of those approvals; and
2. in the case of the required approvals received in respect of documents submitted under COLL 11.6.3 R (1) and COLL 11.6.5 R (2), take the necessary measures to comply with the requirements of COLL 4.8.3 R as soon as possible.

[Note: articles 21(2), 21(3), 23(2) and 23(3) of the UCITS implementing Directive No 2]

Notification by feeder UCITS of intention to be wound up

Where the authorised fund manager of a feeder UCITS gives notice to the FCA under section 251 of the Act or regulation 21 of the OEIC Regulations that it intends to wind up the scheme, it must inform:

1. the unitholders of the feeder UCITS; and
2. where notice is given under COLL 11.6.5R (4) (Application for approval by a feeder UCITS where a master UCITS merges or divides), the authorised fund manager of the master UCITS; of its intention without undue delay.

[Note: articles 20(3) and 22(4) of the UCITS implementing Directive No 2]
Contents of the standard master-feeder agreement

This table belongs to the rule on the conclusion and prescribed content of a standard master-feeder agreement (COLL 11.3.2R (1)).

(1) Provisions related to access to information by a master UCITS and a feeder UCITS:

(a) how and when the master UCITS provides the feeder UCITS with a copy of its instrument constituting the scheme, prospectus and key investor information or any amendment of them;

(b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with COLL 6.6.15AR;

(c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;

(d) what details of breaches by the master UCITS of:
   (i) the law;
   (ii) the instrument constituting the scheme; and
   (iii) the master-feeder agreement;

must be notified to the feeder UCITS and the manner and timing thereof;

(e) where a feeder UCITS uses derivatives for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to derivatives to enable the feeder UCITS to calculate its own global exposure as envisaged by COLL 5.8.4 R (Exposure to derivatives); and

(f) a statement that the master UCITS must inform the feeder UCITS of any other information-sharing arrangements entered into with third parties and, where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

[Note: article 8 of the UCITS implementing Directive No 2]

(2) Provisions related to the basis of investment and divestment by the feeder UCITS:

(a) a statement of which classes of units of the master UCITS are available for investment by the feeder UCITS;

(b) the charges and expenses to be borne by the feeder UCITS and details of any rebate or retrocession of charges or expenses by the master UCITS; and

(c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

[Note: article 9 of the UCITS implementing Directive No 2]
(3) Provisions related to standard dealing arrangements:

(a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) co-ordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that the units of the master UCITS or the feeder UCITS are listed or traded on a secondary market;

(d) where necessary, appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Avoidance of opportunities for market timing);

(e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably where a master UCITS is wound up, merges with another UCITS scheme or EEA UCITS scheme or divides into two or more such schemes;

(g) procedures to ensure enquiries and complaints from unitholders are handled appropriately; and

(h) where the instrument constituting the scheme and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

[Note: article 10 of the UCITS implementing Directive No 2]

(4) Provisions related to events affecting dealing arrangements:

(a) the manner and timing of a notification by either the master UCITS or the feeder UCITS of the temporary suspension and resumption of repurchase, redemption, purchase or subscription of its units; and

(b) the arrangements for notifying and resolving pricing errors in the master UCITS.

[Note: article 11 of the UCITS implementing Directive No 2]

(5) Provisions related to the standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, the co-ordination of the production of their periodic reports; and

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the accounting year of the feeder UCITS in accordance with COLL 11.5.4 R (Preparation of the audit report).

[Note: article 12 of the UCITS implementing Directive No 2]

(6) Provisions related to changes to the standing arrangements:
How and when notice is to be given:

(a) by the master UCITS of proposed and effective amendments to its instrument constituting the scheme, prospectus and key investor information, if these details differ from the standard arrangements for notification of unitholders laid down in the instrument constituting the scheme or prospectus of the master UCITS;

(b) by the master UCITS of a planned or proposed winding up, merger or division;

(c) by either the feeder UCITS or the master UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;

(d) by either the feeder UCITS or the master UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions; and

(e) by the master UCITS of other changes to standing arrangements that it undertakes to provide.

[Note: article 13 of the UCITS implementing Directive No 2]
## Contents of the internal conduct of business rules

This table belongs to the rule on the conclusion and prescribed content of the internal conduct of business rules (**COLL 11.3.2R (2)**).

### (1) Provisions related to conflicts of interest

**a)** The internal conduct of business rules referred to in **COLL 11.3.2R (2)** must include appropriate measures to mitigate conflicts of interest that may arise between:

- (i) the feeder UCITS and the master UCITS; or
- (ii) the feeder UCITS and other unitholders of the master UCITS;

**b)** to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet the requirements of the provisions listed in (b).

The provisions referred to in (a) are:

- **(i)** SYSC 10.1.4 R (Types of conflicts);
- **(ii)** SYSC 10.1.6 R (Record of conflicts);
- **(iii)** SYSC 10.1.10 R (Conflicts policy);
- **(iv)** SYSC 10.1.11 R (Contents of policy);
- **(v)** SYSC 10.1.17 R (Additional requirements for a management company);
- **(vi)** SYSC 10.1.19 R (Structure and organisation of a management company);
- **(vii)** SYSC 10.1.20 R (Avoidance of conflicts of interest for a management company);
- **(viii)** SYSC 10.1.21 R (Disclosure of conflicts for a management company); and
- **(ix)** **COLL 6.6A.6 R** (Strategies for the exercise of voting rights);

or the equivalent provisions implementing articles 12(1)(b) and 14(1)(d) of the **UCITS Directive** and Chapter III of the **UCITS implementing Directive**.

[Note: article 15 of the **UCITS implementing Directive No 2**]

### (2) Provisions related to the basis of investment and divestment by the feeder UCITS:

- **(a)** a statement of which classes of units of the master UCITS are available for investment by the feeder UCITS;

- **(b)** the charges and expenses to be borne by the feeder UCITS and details of any rebate or retrocession of charges or expenses by the master UCITS; and

- **(c)** where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.
Provisions related to standard dealing arrangements:

(a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) co-ordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that units of the master UCITS or the feeder UCITS are listed or traded on a secondary market;

(d) where necessary, appropriate measures to ensure compliance with the requirements in COLL 11.3.6 R (Avoidance of opportunities for market timing);

(e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably where a master UCITS is wound up, merges with another UCITS scheme or EEA UCITS scheme or divides into two or more such schemes; and

(g) where the instrument constituting the scheme and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Provisions related to events affecting dealing arrangements:

(a) the manner and timing of notification by either the master UCITS or the feeder UCITS of the temporary suspension and resumption of repurchase, redemption, purchase or subscription of its units; and

(b) the arrangements for notifying and resolving pricing errors in the master UCITS.

Provisions related to the standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, the co-ordination of the production of their periodic reports; and

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the accounting year of the feeder UCITS in accordance with COLL 11.5.4 R (Preparation of the audit report).
Chapter 12

Management company and product passports under the UCITS Directive
12.1 Introduction

Application

12.1.1 FCA

(1) 

- COLL 12.1 (Introduction) - COLL 12.3 (EEA UCITS management companies) apply to:

(a) a UK UCITS management company that operates an EEA UCITS scheme; and

(b) (i) an EEA UCITS management company that acts as:

(A) the manager of an AUT; or

(B) the ACD of an ICVC;

(ii) any other director of an ICVC; and

(iii) an ICVC;

that is a UCITS scheme.

(c) COLL 12.4 (UCITS product passport) applies in accordance with COLL 12.4.1 R (Application).

Purpose

12.1.2 FCA

(1) This chapter contains rules and guidance relating to the operation of the management company passport under the UCITS Directive and explains how the passporting regime applies to:

(a) a UK UCITS management company that operates an EEA UCITS scheme; and

(b) an EEA UCITS management company that acts as the manager of an AUT or the ACD of an ICVC that is a UCITS scheme;

whether from a branch it establishes in an EEA State other than its Home State or under the freedom to provide cross border services.

(2) COLL 12.4 (UCITS product passport) contains rules and guidance relating to the operation of the product passport under the UCITS Directive under which a UCITS scheme established in the United Kingdom may passport into and be marketed in another EEA State (the Host State).
Where an authorised fund manager wishes to market the units of a UCITS scheme it operates in a Host State, without establishing a branch or pursuing any other activities in that State, a management company passport is not required for those marketing activities. A UCITS marketing notification should be made for the relevant UCITS scheme (see COLL 12.4 (UCITS product passport) in order to access the market of the Host State. The marketing must be carried on in conformity with the laws and regulations of that Host State implementing Chapter XI of the UCITS Directive.

[Note: article 16(1) second paragraph of the UCITS Directive]
12.2 UK UCITS management companies

Application

This section applies to a UK UCITS management company that operates an EEA UCITS scheme by establishing a branch in another EEA State or under the freedom to provide cross-border services.

References in COLL to authorised fund manager

Where this section refers to rules in any other part of this sourcebook, references in those rules and any relevant guidance to an authorised fund manager, AFM or operator of a UCITS scheme are to be interpreted as if they are referring to a UK UCITS management company of the EEA UCITS scheme.

Home State/Host State split of regulatory and supervisory responsibilities for UK UCITS management companies operating under a passport

A UK UCITS management company that operates an EEA UCITS scheme must in relation to that activity comply with the rules which relate to:

1. the organisation of the management company, including delegation arrangements;
2. risk-management procedures;
3. prudential rules and supervision;
4. operating conditions; and
5. reporting requirements.

[Note: article 19(1) of the UCITS Directive]

Arrangements and organisational decisions

A UK UCITS management company that operates an EEA UCITS scheme must decide and be responsible for adopting and implementing all the arrangements and organisational decisions that are necessary to ensure compliance with rules drawn up by the EEA State in which that
**scheme** is established, in implementation of its obligations under articles 19(3) and 19(4) of the **UCITS Directive**.

[Note: article 19(6) of the **UCITS Directive**]

The FCA’s equivalent **rules** under articles 19(3) and 19(4) of the Directive are set out in
- ■ COll 12.3.5 R (COll fund rules under the management company passport: the fund application rules) and ■ COll 6.6.3 R (Functions of the authorised fund manager).

**Rules of conduct: UK UCITS management companies operating in another Member State**

1. Each EEA State, including the **United Kingdom**, is required to implement article 14 of the **UCITS Directive** by drawing up rules of conduct which **management companies** authorised in that State must observe at all times, except as explained in (3).

2. **UK UCITS management companies** operating an **EEA UCITS scheme** under the freedom to provide **cross border services** (otherwise than by establishing a **branch** in that State) are advised that, as provided for elsewhere in the **Handbook**, they are required to comply with the following **rules** and **guidance** in relation to such business, as follows:
   - (a) ■ COll 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);
   - (b) ■ COll 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);
   - (c) ■ COll 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);
   - (d) **SYSC**, to the extent indicated in column A+ (Application to a management company) of Part 3 of **SYSC 1 Annex 1** (Detailed application of SYSC);
   - (e) **COBS**, to the extent indicated at paragraph 9.1 of Part 3 of ■ COBS 1 Annex 1 (Application).

3. Rules of conduct drawn up by a **Host State** under article 14 of the **UCITS Directive** are for **branch** operations reserved to that State under article 17(4) of that Directive. A **UK UCITS management company** operating an **EEA UCITS scheme** from a **branch** in an EEA State other than the **United Kingdom**, should be aware that it will be expected to comply with the relevant requirements of its **Host State regulator** that correspond to the **rules** referred to at (2)(a) to (c) and (e). Further **guidance** on the **COBS** position may be found at paragraph 9 of Part 3 of ■ COBS 1 Annex 1 (Application). As explained at paragraph 2.16AR of Part 2 of ■ SYSC 1 Annex 1 (Detailed application of SYSC), **SYSC**, to the extent indicated in column A+ (Application to a management company) of Part 3 of ■ SYSC 1 Annex 1, applies to a **UK UCITS management company** in relation to **passported activities** carried on by it from a **branch** in another EEA State, reflecting that responsibility for such matters is shared between the management company’s **Home** and **Host State regulators**.

[Note: articles 14, 17(4) and 18(3) of the **UCITS Directive**]
Notification to the UCITS Home State regulator

(1) A UK UCITS management company which applies to operate an EEA UCITS scheme in another EEA State is advised that it must comply with the requirements of the Host State regulator regarding provision to them of the following documents:

(a) the written agreement it has entered into with the depositary of the EEA UCITS scheme, as referred to in articles 23 and 33 of the UCITS Directive; and

(b) information on delegation arrangements (if any), regarding functions of investment management and administration which are to be delegated to a third party.

(2) If the UCITS management company already manages other UCITS of the same type in the EEA State referred to in (1), reference to the documents already provided should be sufficient.

(3) Any subsequent material modifications of the documents referred to in (1) must be notified by the UK UCITS management company to the Host State regulator.

[Note: article 20(1) and 20(4) of the UCITS Directive]

Requirement to make information available to the public or the competent authority of the scheme’s Home Member State

A UK UCITS management company that operates an EEA UCITS scheme is advised that in accordance with the requirements of the Host State regulator it must establish appropriate procedures and arrangements to make information available at the request of the public or that regulator.
12.3 EEA UCITS management companies

Application

This section applies to an EEA UCITS management company that provides collective portfolio management services in the United Kingdom by acting as the manager of an AUT or the ACD of an ICVC which is a UCITS scheme, either by establishing a branch or under the freedom to provide cross border services.

Purpose

(1) An EEA UCITS management company may be the manager of an AUT, or the ACD of an ICVC, that is a UCITS scheme (see SUP 13A (Qualifying for authorisation under the Act)).

(2) An EEA UCITS management company that acts as the manager of an AUT, or the ACD of an ICVC, that is a UCITS scheme may conduct its business from a branch in the United Kingdom or under the freedom to provide cross border services (without establishing a branch in the United Kingdom).

(3) The Glossary definition of an "authorised fund manager" includes an EEA UCITS management company.

(4) This section provides for the application of the FCA Handbook to such a firm.

[Note: article 16(1) of the UCITS Directive]

Further reading on the UCITS management company passport regime

A summary of how the passport for UCITS management companies established by the UCITS Directive is intended to operate, including the processes for applying for the necessary approvals and describing the regulatory split of responsibilities between the competent authorities of the relevant Home State and Host State, is to be found in COLLG.

Provision of documentation to the FCA: EEA UCITS management companies

(1) An EEA UCITS management company which applies to manage a UCITS scheme under paragraph 15A(1) of Schedule 3 to the Act must provide the FCA with the following documents:
(a) the written agreement that has been entered into with the depositary of the scheme, as referred to in COLL 6.6.4 R (6) (General duties of the depositary);

(b) information on any delegation arrangements it has made regarding the functions of investment management and administration, as referred to in Annex II of the UCITS Directive; and

(c) the form required under SUP 13A Annex 3R (EEA UCITS management companies: application for approval to manage a UCITS established in the United Kingdom).

(2) If the EEA UCITS management company already manages other UCITS schemes of the same type in the United Kingdom and under the same arrangements, reference to the documents already provided to the FCA is sufficient compliance with (1)(a) and (b).

(3) If any subsequent material modification is made to any of the documents referred to in (1)(a) and (b), the EEA UCITS management company must promptly notify the FCA of those changes.

[Note: article 20(1) first and second paragraphs and article 20(4) of the UCITS Directive]

An EEA UCITS management company that manages a UCITS scheme must comply with the rules of the FCA Handbook which relate to the constitution and functioning of the UCITS scheme (the fund application rules), as follows:

(1) the setting up and authorisation of the UCITS scheme (COLL 1 (Introduction), COLL 2 (Authorised fund applications), COLL 3 (Constitution), COLL 6.5 (Appointment and replacement of the authorised fund manager and the depositary), COLL 6.6 (Powers and duties of the scheme, the authorised fund manager and the depositary) (unless disapplied), COLL 6.7 (Payments), COLL 6.9.1 R (Application) to COLL 6.9.8 G (Undesirable or misleading names: umbrellas - guidance) and COLL 6.9.11 R (Notification to the FCA in its role as registrar of ICVCs));

(2) the issue and redemption of units (COLL 6.1 (Introduction and application), COLL 6.2 (Dealing) (with the exception of COLL 6.2.19 R (Limited redemption) and COLL 6.2.20 G (Limited redemption: guidance)) and COLL 7.2 (Suspension and restart of dealings));
(3) investment policies and limits, including the calculation of total exposure and leverage, and restrictions on borrowing, lending and uncovered sales (■ COLL 5.1 (Introduction) to ■ COLL 5.5 (Cash, borrowing, lending and other provisions), ■ COLL 5.8 (Investment powers and borrowing limits for feeder UCITS), ■ COLL 6.12 (Risk management policy and risk measurement) and ■ COLL 11 (Master-feeder arrangements under the UCITS Directive));

(4) the value of the scheme property and the accounting of the UCITS scheme (■ COLL 6.1 (Introduction and application) and ■ COLL 6.3 (Valuation and pricing) (unless disapplied));

(5) the calculation of the issue or redemption price, and errors in the net asset value and related investor compensation (■ COLL 6.1 (Introduction and application) and ■ COLL 6.3 (Valuation and pricing));

(6) the distribution or reinvestment of the income property (■ COLL 6.8 (Income: accounting, allocation and distribution));

(7) the disclosure and reporting requirements of the UCITS scheme, including the prospectus, key investor information document and periodic reports (■ COLL 4.1 (Introduction), ■ COLL 4.2 (Pre-sale notifications), ■ COLL 4.5 (Reports and accounts) and ■ COLL 4.7 (Key investor information and marketing communications));

(8) the arrangements made for marketing ■ COBS 4 (Communicating with clients, including financial promotions), ■ COBS 14 (Providing product information to clients) and ■ COLL 4.7 (Key investor information and marketing communications));

(9) the relationship with unitholders (■ COLL 4.1 (Introduction), ■ COLL 4.3 (Approvals and notifications) and ■ COLL 4.4 (Meetings of unitholders and service of notices));

(10) the merging, restructuring, winding up and liquidation of the UCITS scheme (■ COLL 7.1 (Introduction) and ■ COLL 7.3 (Winding up a solvent ICVC and terminating a sub-fund of an ICVC) to ■ COLL 7.7 (UCITS mergers) (including ■ COLL 7.6.2 R (3) to ■ COLL 7.6.2 R (6));

(11) where applicable, the content of the register (■ COLL 6.4 (Title and registers));

(12) the exercise of unitholders' voting rights and other unitholders' rights in relation to (1) to (11) (including ■ COLL 4.1 (Introduction), ■ COLL 4.3 (Approvals and notifications), ■ COLL 4.4 (Meetings of unitholders), Dispute resolution: Complaints sourcebook) (DISP
- see DISP 1 Annex 2 G for a summary of the relevant requirements that apply) and the Compensation sourcebook (COMP)); and

(13) the application and periodic fees of the UCITS scheme (FEES)).

[Note: articles 16(3) and 19(3) of the UCITS Directive]

Requirement to make information available to the public or the FCA

(1) An EEA UCITS management company that manages a UCITS scheme must establish appropriate procedures and arrangements to make information available at the request of the public or the FCA.

(2) The EEA UCITS management company must ensure that the procedures and arrangements it establishes in accordance with (1), enable the FCA to obtain any information it requests directly from the management company.

[Note: article 15 second paragraph and article 21(2) third paragraph, of the UCITS Directive]

EEA UCITS management companies: compliance with FCA rules

An EEA UCITS management company that operates a UCITS scheme is advised that in particular it needs to comply with:

(1) COLL 6.6.3 R (Functions of the authorised fund manager) requiring it to fulfil the obligations placed on it by the instrument constituting the scheme and the prospectus of that scheme;

(2) Dispute resolution: Complaints sourcebook (DISP - see DISP 1 Annex 2 G for a summary of the relevant requirements that apply, which include the complaints handling rules (under which the management company is required to be subject to the Compulsory Jurisdiction of the UK’s Financial Ombudsman Service) as set out in DISP 2 and 3, but note that the application of many of the requirements in DISP differs depending on whether the collective portfolio management services are being provided from a branch in the UK or under the freedom to provide cross border services);

(3) and to the extent applicable, the Compensation sourcebook (COMP) requiring it to participate in the UK’s Financial Services Compensation Scheme which provides compensation cover where valid claims relating to a UCITS scheme arise from the default of a management company.

[Note: article 16(3), 19(4) and 19(6) of the UCITS Directive]

EEA UCITS management companies: conduct of business rules

(1) In addition to the requirements of this section, an EEA UCITS management company that provides collective portfolio management services from a branch in the United Kingdom must comply with the following rules that implement the requirements of article 14(1) of the UCITS Directive:
(a) COLL 6.6A.2 R (Duties of AFMs of UCITS schemes and EEA UCITS schemes to act in the best interests of the scheme and its unitholders);

(b) COLL 6.6A.4 R (Due diligence requirements of AFMs of UCITS schemes and EEA UCITS schemes);

(c) COLL 6.6A.5 R (Compliance with the regulatory requirements applicable to the conduct of business activities of a UCITS management company);

(d) SYSC, to the extent indicated in column A+ (Application to a management company) of Part 3 of SYSC 1 Annex 1 (Detailed application of SYSC); and

(e) COBS, to the extent indicated at paragraph 9.1 of Part 3 of COBS 1 Annex 1 (Application).

(2) The effect of article 18(3) of the UCITS Directive is that an EEA UCITS management company managing a UCITS scheme under the freedom to provide cross border services without establishing a branch in the United Kingdom, has to comply with the relevant conduct of business rules drawn up by its Home State regulator that implement the requirements of article 14(1) of the Directive. So the rules set out at (1) do not apply to such a management company. However, such management companies must comply in all respects with the fund application rules referred to in COLL 12.3.5 R.

[Note: articles 14, 16(3), 17(4), 18(3) and article 19(3) of the UCITS Directive]
12.4 UCITS product passport

Application

12.4.1 FCA

(1) This section applies to:

(a) an authorised fund manager of an AUT or ICVC;
(b) any other director of an ICVC; and
(c) an ICVC;

which is a UCITS scheme whose units may be marketed in another EEA State (the Host State).

(2) The marketing of units of a UCITS scheme in the Host State may not commence until the FCA has, in accordance with paragraph 20B(5) (Notice of intention to market) of Schedule 3 to the Act, notified the authorised fund manager, in response to the application of that firm, that it has transmitted a UCITS marketing notification to the appropriate Host State regulator.

12.4.2 FCA

The effect of article 58(4) (b) of the UCITS Directive is that a UCITS scheme that is a master UCITS which only has one or more feeder UCITS in another EEA State and therefore does not raise capital directly from the public in that EEA State will not thereby be exercising its right to market its units in that Host State in accordance with Chapter XI of the UCITS Directive.

[Note: article 58(4)(b) of the UCITS Directive]

 Availability of facilities

12.4.3 FCA

The authorised fund manager of a UCITS scheme whose units are being marketed in a Host State should be aware that it may be required by the laws, regulations and administrative provisions of the Host State regulator to maintain facilities in that State, including for making payments to unitholders, repurchasing or redeeming units and making available the information which is required to be provided in relation to the scheme.

[Note: article 92 of the UCITS Directive]

 Keeping fund documentation up to date and notification of changes

12.4.4 FCA

(1) The authorised fund manager of a UCITS scheme whose units are being marketed in the Host State must ensure that:
(a) its instrument constituting the scheme, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report; and

(b) its key investor information document;

together with their translations (wherever necessary), are kept up to date.

(2) The authorised fund manager must notify any amendments to the documents referred to in (1) to each relevant Host State regulator and must indicate to them where those documents can be obtained electronically.

(3) In the event of a change in the information regarding the arrangements made for marketing, communicated in the notification letter submitted to the FCA under paragraph 20B of Schedule 3 to the Act, or a change regarding the classes of units to be marketed, the authorised fund manager must give written notice of the change to each relevant Host State regulator before implementing the change.

(4) For the purposes of (2) and (3), the authorised fund manager may give written notice of the change by sending an e-mail to the e-mail address maintained by each relevant Host State regulator.

(5) The e-mail referred to in (4) notifying the update or amendment may:

(a) describe the update or the amendment that has been made; or

(b) provide the new version of the document as an attachment, in which case it must be provided in a commonly used electronic format.

[Note: articles 93(2), 93(7) second and third sentences and 93(8) of the UCITS Directive and article 32(2) and article 32(3) of the UCITS implementing Directive No 2]

Provision of information and documents

(1) The authorised fund manager of a UCITS scheme whose units are being marketed in a Host State must ensure that investors within the territory of that Host State are provided with all the information and documents which it is required by the Handbook to provide to investors in the United Kingdom.

(2) The information and documents referred to in (1) must be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the Host State and in compliance with the following provisions:
(a) the *key investor information document* must be translated into the official language or one of the official languages of the *Host State* or into a language approved by its *Host State regulator*;

(b) information or *documents* other than the *key investor information document* (including the *prospectus*, the *instrument constituting the scheme* and the latest annual and half-yearly long reports of the *scheme*) must be translated, at the choice of the *authorised fund manager*, into the official language, or one of the official languages, of the *Host State*, or into a language approved by its *Host State regulator*, or provided in a language customary in the sphere of international finance; and

(c) accurate translations of information or *documents* under (a) or (b) must be produced under the responsibility of the *authorised fund manager*.

(3) The requirements in this *rule* also apply to any changes to the information or *documents* referred to in (1) and (2).

[Note: articles 94(1) and 94(2) of the *UCITS Directive*]

The frequency of the publication of the *issue, sale, cancellation, repurchase or redemption prices of units* of the *UCITS scheme* when they are marketed in another *EEA State* is governed by ■ COL 6.3.11 R (Publication of prices).

[Note: article 94(3) of the *UCITS Directive*]

**Reference to the scheme’s legal form**

For the purpose of pursuing its *marketing* activities in another *Host State*, an *authorised fund manager* of a *UCITS scheme* may use the same reference to the *scheme’s legal form* (such as *open-ended investment company* or *investment company with variable capital* or *authorised unit trust*) in its designation in the *Host State* as is used in the *United Kingdom*.

[Note: article 96 of the *UCITS Directive*]

**UCITS Host State’s access to documents and updates of documents**

(1) The *authorised fund manager* of a *UCITS scheme* whose *units* are being marketed in a *Host State* must ensure that an electronic copy of each *document* referred to in ■ COL 12.4.4 R (1) is made available on:

(a) the website of the *UCITS scheme* or the *authorised fund manager*; or

(b) another website designated by the *authorised fund manager* in the notification letter submitted to the *FCA* under.
paragraph 20B of Schedule 3 to the Act or any updates to it.

(2) Any document that is made available on a website referred to in (1) must be provided in an electronic format in common use.

(3) The authorised fund manager of the UCITS scheme must ensure that each relevant Host State regulator has access to the website referred to in (1).

[Note: article 31 of the UCITS implementing Directive No 2]
Chapter 13

Operation of feeder NURS
13.1 Introduction

Application
This chapter applies to:

1. the authorised fund manager of a feeder NURS;
2. an ICVC that is a feeder NURS;
3. the authorised fund manager of a UCITS scheme or non-UCITS retail scheme which operates as a qualifying master scheme to a feeder NURS; and
4. (in the case of COLL 13.2.6 R (Inducements) only) any person acting on behalf of either the feeder NURS or the authorised fund manager of the feeder NURS.

Purpose
This chapter sets out various obligations, additional to those found elsewhere in the Handbook, that persons listed in COLL 13.1.1 R must comply with in relation to the operation of a feeder NURS and its qualifying master scheme.
13.2 Operational requirements for feeder NURS

Application

This section applies as follows:

(1) COLL 13.2.2 R to COLL 13.2.6 R apply to the authorised fund manager of a feeder NURS;

(2) COLL 13.2.6 R also applies to:
   (a) an ICVC that is a feeder NURS; and
   (b) any person acting on behalf of either the feeder NURS or the authorised fund manager of the feeder NURS; and

(3) COLL 13.2.7 R applies to the authorised fund manager of a UCITS scheme or a non-UCITS retail scheme which operates as a qualifying master scheme to a feeder NURS.

Pre-investment requirements of the authorised fund manager of a feeder NURS

Before investing in the qualifying master scheme, the authorised fund manager of the feeder NURS must:

(1) be satisfied on reasonable grounds that the authorised fund manager can obtain from the qualifying master scheme all the information necessary to comply on an ongoing basis with the rules in COLL;

(2) having consulted with the depositary of the feeder NURS, be satisfied on reasonable grounds that the depositary of the feeder NURS can obtain from the qualifying master scheme, the operator of the qualifying master scheme or the depositary of the qualifying master scheme all the information necessary to comply with its duties under COLL 6.6.4 R (General duties of the depositary); and

(3) where the qualifying master scheme is a UCITS scheme or a non-UCITS retail scheme, inform the authorised fund manager of the qualifying master scheme of the date on which the feeder
NURS will begin to invest into the qualifying master scheme as a feeder NURS.

Ownership of units in a feeder NURS

The authorised fund manager of a feeder NURS must take reasonable care to ensure that its units are not owned, including beneficially owned, by the qualifying master scheme.

Charges made by the qualifying master scheme or its operator to a feeder NURS on investment or disposal

(1) Where the operator of a qualifying master scheme or the authorised fund manager of a qualifying master scheme imposes any charge which is, or is equivalent in effect to, a preliminary charge or redemption charge on the feeder NURS for the acquisition or disposal of units in the qualifying master scheme, the authorised fund manager of the feeder NURS must pay to the feeder NURS an amount equal to such charge within four business days following the relevant acquisition or disposal.

(2) In this rule, where the operator of a qualifying master scheme or authorised fund manager of a qualifying master scheme requires any addition to or deduction from the consideration paid on the acquisition or disposal of units in the qualifying master scheme which is, or is equivalent in effect to, a dilution levy made in accordance with COLL 6.3.8 R (Dilution) or SDRT provision made in accordance with COLL 6.3.7 R (SDRT Provision), it is to be treated as part of the price of the units and not as part of any preliminary charge or redemption charge referred to in (1).

Avoidance of opportunities for market timing

The authorised fund manager of a feeder NURS must take appropriate measures to co-ordinate the timing of the feeder NURS’ net asset value calculation and publication with those of its qualifying master scheme, including the publication of dealing prices, in order to avoid market timing of their units, and prevent arbitrage opportunities.

Inducements

Where, in connection with an investment in the units of the qualifying master scheme, a distribution fee, commission or other monetary benefit is received by:

(1) a feeder NURS; or

(2) an authorised fund manager of a feeder NURS; or

(3) any person acting on behalf of (1) or (2);
that fee, commission or other monetary benefit must be paid into the scheme property of the feeder NURS within four business days of receipt of that fee, commission or other monetary benefit.

Obligations to unitholders of a qualifying master scheme

Where the qualifying master scheme is a UCITS scheme or a non-UCITS retail scheme, the authorised fund manager of the qualifying master scheme must not, if it would unfairly prejudice the interests of unitholders of the qualifying master scheme other than the feeder NURS, provide or make available information to the authorised fund manager of the feeder NURS without at the same time also providing or making available that information to the unitholders of the qualifying master scheme other than the feeder NURS.
COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32), and in particular Article 75(4), Article 78(7), and Article 81(2) thereof,

Whereas:

(1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom, and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.

(2) The form of a Regulation is justified as this form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member States. All stakeholders should benefit
from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS’ market is consistent and comparable.

(3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not undermine the key investor information document, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.

(4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

(5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income, or a combination of both. The description of the investment policy should indicate to the investor what the overall aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS’ performance need to be mentioned, rather than all possible eligible instruments.

(6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund, bearing in mind the need to avoid over-burdening the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.
(7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company’s internal processes related to risk management, established in accordance with Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company (see page 42 of this Official Journal). For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and comment on the risk and reward profile section of the key investor information document.

(8) This Regulation specifies the common format for the presentation and explanation of charges, including relevant warnings, so that investors are appropriately informed about the charges they will have to incur and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.


(10) It should be recognised that cross-referring to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.

(11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 78(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering
into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.

(12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund of funds structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.

(13) With regard to UCITS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors' interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCITS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.

(14) In the case of a fund of funds, the right balance is kept between the information on the UCITS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be prepared on the basis that the investor does not wish or need to be informed in detail about the individual features of each of the underlying collectives, which in any case are likely to vary from time to time if the UCITS is being actively managed. However, in order for the key investor information document to deliver effective disclosure of the fund of funds' objective and investment policy, risk factors, and charging structure, the characteristics of its underlying funds should be transparent.

(15) In the case of master-feeder structures, the description of the feeder UCITS' risk and reward profile should not be materially different to that of the corresponding section in the master UCITS' key investor information document so that the feeder can copy information from the key investor information document of the master wherever it is relevant. However, this information should be supplemented by relevant statements or duly adjusted in those cases where ancillary assets held by the feeder might modify the risk profile compared to the master, addressing the risks inherent in these ancillary assets, for instance where derivatives are used. The combined costs of investing in the feeder and the master should be disclosed to investors in the feeder.

(16) With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required. Prospective performance scenarios involve calculating the expected return of the fund under favourable, adverse,
or neutral hypotheses regarding market conditions. These scenarios should be chosen so as to effectively illustrate the full range of possible outcomes according to the formula.

(17) Where the key investor information and the prospectus are to be provided in a durable medium other than paper or by means of a website, additional safety measures are necessary for investor protection reasons, so as to ensure that investors receive information in a form relevant to their needs, and so as to maintain the integrity of the information provided, prevent alterations that undermine its comprehensibility and effectiveness, and avoid manipulation or modification by unauthorised persons. This Regulation contains a reference to rules on durable medium laid down in the Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26) in order to ensure the equal treatment of investors and a level playing field in financial sectors.

(18) In order to allow management companies and investment companies to adapt to the new requirements contained in this Regulation in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the transposition of Directive 2009/65/EC.


(20) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

Article 1

Subject matter

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 78(2) to (5) and 81(1) of Directive 2009/65/EC.

Article 2

General principles

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UCITS it manages.
2. This Regulation shall apply to any investment company which has not
designated a management company authorised pursuant to Directive 2009/65/EC.

Article 3

Principles regarding the key investor information document

1. This Regulation specifies in an exhaustive manner the form and content of
the document containing key investor information (hereinafter referred to as key
investor information document). No other information or statements shall be
included except where this Regulation states otherwise.

2. The key investor information shall be fair, clear and not misleading.

3. The key investor information document shall be provided in such a way as
to ensure that investors are able to distinguish it from other material. In
particular, it shall not be presented or delivered in a way that is likely to lead
investors to consider it less important than other information about the UCITS
and its risks and benefits.

CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

1. The content of the key investor information document shall be presented in
the order as set out in paragraphs 2 to 13.

2. The title 'Key investor information' shall appear prominently at the top of
the first page of the key investor information document.

3. An explanatory statement shall appear directly underneath the title. It shall
read:

'This document provides you with key investor information about this fund. It
is not marketing material. The information is required by law to help you
understand the nature and the risks of investing in this fund. You are advised
to read it so you can make an informed decision about whether to invest'.

4. The identification of the UCITS, including the share class or investment
compartment thereof, shall be stated prominently. In the case of an investment
compartment or share class, the name of the UCITS shall follow the compartment
or share class name. Where a code number identifying the UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS.

5. The name of the management company shall be stated.

6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.

8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.

9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.

10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.

11. The section of the key investor information document entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

'This fund is authorised in [name of Member State] and regulated by [identity of competent authority]'.

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

'[Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority]'.

13. Information on publication shall consist of the following statement:

'This key investor information is accurate as at [the date of publication]'.

SECTION 2
Language, length and presentation

Article 5

Presentation and language

1. A key investor information document shall be:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:

(i) the language used is clear, succinct and comprehensible;

(ii) the use of jargon is avoided;

(iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.

3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

Article 6

Length

The key investor information document shall not exceed two pages of A4-sized paper when printed.

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT

SECTION 1

Objectives and investment policy

Article 7
Specific contents of the description

1. The description contained in the 'Objectives and investment policy' section of the key investor information document shall cover those essential features of the UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

(a) the main categories of eligible financial instruments that are the object of investment;

(b) the possibility that the investor may redeem units of UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

(e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS has an index-tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;

(c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as 'growth', 'value' or 'high dividends';

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS;

(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, a statement that this is the
case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2(b), (c) and (d).

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS.

SECTION 2

Risk and reward profile

Article 8

Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:

(a) a narrative explanation of the indicator and its main limitations;

(b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.
4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UCITS;

(b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UCITS may shift over time;

(c) a statement that the lowest category does not mean a risk-free investment;

(d) a brief explanation as to why the UCITS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

(a) credit risk, where a significant level of investment is made in debt securities;

(b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UCITS as a whole;

(c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;

(d) operational risks and risks related to safekeeping of assets;

(e) impact of financial techniques as referred to in Article 50(1)(g) of Directive 2009/65/EC such as derivative contracts on the UCITS' risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

**Article 9**

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS’ management company as laid down in Directive 2010/43/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion.

**SECTION 3**
Charges

Article 10

Presentation of charges

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

   (a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor’s capital commitment to the UCITS;

   (b) a single figure shall be shown for charges taken from the UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UCITS over the defined period, and based on the figures for the preceding year;

   (c) the table shall list and explain any charges taken from the UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:

   (a) with regard to entry and exit charges:

   (i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;

   (ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;

   (b) with regard to 'ongoing charges', there shall be a statement that the ongoing charges figure is based on the last year’s expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.

2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UCITS, including the costs of marketing and distributing the UCITS, and that these charges reduce the potential growth of the investment.
Article 12

Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, this shall be stated within the 'Objectives and investment policy' section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UCITS' last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

2. Paragraph 1 shall not apply in the following cases:

(a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;

(b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14

Cross-referencing

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance
1. The information about the past performance of the UCITS shall be presented in a bar chart covering the performance of the UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.

**Article 16**

Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

**Article 17**

Impact and treatment of material changes
1. Where a material change occurs to a UCITS’ objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS’ past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 18

Use of a benchmark alongside the past performance

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS’ past performance.

2. For UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS did not exist.

Article 19

Use of 'simulated' data for past performance

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

(a) a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS;

(b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:

(i) the feeder’s strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;

(ii) the feeder’s characteristics do not differ materially from those of the master.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent
authority of the Member State reasonably assesses that the change of status would not impact the UCITS' performance.

4. In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, only the past performance of the receiving UCITS shall be maintained in the key investor information document.

SECTION 5

Practical information and cross-references

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed:

(a) the name of the depositary;

(b) where and how to obtain further information about the UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of units;

(d) a statement that the tax legislation of the UCITS' home Member State may have an impact on the personal tax position of the investor;

(e) the following statement:

'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UCITS.'

2. Where the key investor information document is prepared for a UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.

3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

Article 21
Use of cross-references to other sources of information

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors’ understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

SECTION 6

Review and revision of the key investor information document

Article 22

Review of key investor information

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.

2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where these changes were not subject to review as referred to in paragraph 1.

3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

Article 23

Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.

2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.
3. A key investor information document with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24

Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.

2. Where the 'ongoing charges' calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for 'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in future.

This change of basis shall be disclosed through the following statement:

'The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The UCITS' annual report for each financial year will include detail on the exact charges made.'

CHAPTER IV

PARTICULAR UCITS STRUCTURES

SECTION 1

Investment compartments

Article 25

Investment compartments

1. Where a UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

(a) that the key investor information document describes a compartment of a UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS named at the beginning of the key investor information document;
(b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.

3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the 'Charges' section of the key investor information document.

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.

2. The key investor information pertinent to two or more classes of the same UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected
as representative, using the term by which it is designated in the UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 50(1)(e) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UCITS as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that that UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UCITS' calculation of its own ongoing charges figure.

SECTION 4

Feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS, as defined in Article 58 of Directive 2009/65/EC, shall contain, in the description of objectives
and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:

(i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS; or

(ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

Article 32

Risk and reward profile section

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.

2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 33

Charges section

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

Article 34

Practical information section

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.

2. The information referred to in paragraph 1 shall include:

(a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);
(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 63(5) of Directive 2009/65/EC;

(c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect.

Article 35

Past performance

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.

2. Paragraph 1 shall not apply:

(a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or

(b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or

(c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5

Structured UCITS

Article 36

Performance scenarios

1. The key investor information document for structured UCITS shall not contain the 'Past performance' section.

For the purposes of this Section, structured UCITS shall be understood as UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features.
2. For structured UCITS, the 'Objectives and investment policy' section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula. They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UCITS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements. However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

Article 37

Length

The key investor information document for structured UCITS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM

Article 38

Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website

1. Where, for the purposes of Directive 2009/65/EC, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:
(a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and

(b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.

2. Where the key investor information document or the prospectus is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;

(b) the investor must specifically consent to the provision of that information in that form;

(c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI

FINAL PROVISIONS

Article 39

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

2. This Regulation shall apply from 1 July 2011.
This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 July 2010.

For the Commission

The President

José Manuel BARROSOL

ANNEX I

REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.

2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to 7 running from left to right, representing levels of risk and reward, from lowest to highest.

3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.

4. The category into which the UCITS falls shall be prominently indicated.

5. No colours shall be used for distinguishing between items on the scale.

ANNEX II

PRESENTATION OF CHARGES

The charges shall be presented in a table structured in the following way: One-off charges taken before or after you invest

| Entry charge | [ ] % |
| Exit charge  | [ ] % |

This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]

Charges taken from the fund over a year

| Ongoing charge | [ ] % |

Charges taken from the fund under certain specific conditions

| Performance fee | [ ] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark] |
- A percentage amount shall be indicated for each of these charges.

- In the case of a performance fee, the amount charged in the fund’s last financial year shall be included as a percentage figure.

ANNEX III

PRESENTATION OF THE PAST PERFORMANCE INFORMATION

The bar chart presenting past performance shall comply with the following criteria:

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;

2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns hard to distinguish;

3. the X-axis shall be set at the level of 0% performance;

4. a label shall be added to each bar indicating the return in percentage that was achieved;

5. past performance figures shall be rounded to one decimal place.
### Collective Investment Schemes

#### COLL TP 1

**Transitional Provisions**

<table>
<thead>
<tr>
<th>Material to which the transitional provision applies</th>
<th>Transitional provision</th>
<th>Transition-provision: dates in force</th>
<th>Handbook provision: coming into force</th>
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</thead>
<tbody>
<tr>
<td>Extra time provisions</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Existing schemes electing to comply with COLL**

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<th>Rule in COLL</th>
<th>Transitional provision</th>
<th>Transition-provision: dates in force</th>
<th>Handbook provision: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>1A</td>
<td>Each and every rule</td>
<td>The rules in COLL do not apply to any relevant party in relation to an authorised fund where the winding up of the fund has commenced before 12 February 2007, provided that each relevant party shall continue to comply with the provisions of CIS as if they still applied to them.</td>
<td>From 12 February 2007</td>
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<td>(4)</td>
</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
</tr>
<tr>
<td>5</td>
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<td>7</td>
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<tr>
<td>13</td>
<td>[deleted]</td>
<td>[deleted]</td>
<td>Expired</td>
</tr>
<tr>
<td>14</td>
<td>Amendments to COLL made by the Collective Investment Schemes Sourcebook (UCITS Eligible Assets Directive and Other)</td>
<td>(1) The authorised fund manager of an authorised fund may elect for early compliance with the instrument, in which case COLL applies as if it had been amended by the instrument.</td>
<td>Expired</td>
</tr>
</tbody>
</table>

**Definition of relevant party**
<table>
<thead>
<tr>
<th>Material to which the transitional provision applies</th>
<th>Transitional provision</th>
<th>Transition- al provision: dates in force</th>
<th>Hand- book provision: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>Amendments) Instrument 2008</td>
<td>An election is irrevocable and does not take effect until the authorised fund manager notifies the depositary and the FCA in writing of the date it takes effect.</td>
<td>Expired</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The authorised fund manager must make a record of the election and retain it for a period of six years from the date it takes effect.</td>
<td>From 6 March 2008 until 6 years from the date the relevant election took effect</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Amendments to COLL 5.6.3 R made by the Collective Investment Schemes Sourcebook (Amendment No 5) Instrument 2009</td>
<td>The new timing provisions in relation to the prudent spread of risk will not take effect until 6 January 2011 in relation to those non-UCITS retail schemes authorised as an AUT or an ICVC prior to 6 January 2010.</td>
<td>6 January 2010 to 5 January 2011</td>
</tr>
<tr>
<td>16</td>
<td>COLL 4.5 and COLL 8.3.5 R to COLL 8.3.5E R</td>
<td>In relation to the preparation of any report pursuant to COLL 4.5 or COLL 8.3.5 R to COLL 8.3.5E R for the last annual accounting period or half-yearly accounting period ending before 6 March 2010, the authorised fund manager, depositary and auditor may together elect to comply with those rules as they were in force on 5 March 2010. The authorised fund manager must make a record of any such election and retain it for a period of six years from the date on which that record is made.</td>
<td>From 6 March 2010 to 5 July 2010</td>
</tr>
<tr>
<td>17</td>
<td>COLL 4.5.5 R (1)(a)(iv) and COLL 4.5.9 R (9A)</td>
<td>An authorised fund manager need not include in the short report or long report for a UCITS scheme the figure for the synthetic risk and reward indicator that would have been disclosed in its most recent key investor informa-</td>
<td>From 1 July 2011 to 31 October 2012</td>
</tr>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
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<td>-----</td>
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</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Hand- book provision: coming into force</td>
</tr>
</tbody>
</table>

A material transitional provision document provided that, as at the accounting reference date to which the report relates, marketing of units in the scheme is being done on the basis of a simplified prospectus meeting the requirements of the Handbook.

[Note: article 118(2) of the UCITS Directive]

18 Each and every rule R in COLL that relates to key investor information

(1) This rule applies to:

(a) an authorised fund manager of a UCITS scheme; and

(b) an ICVC which is a UCITS scheme and any other director of that ICVC; where the authorisation order for the scheme was made before 1 July 2011 and for this purpose, where this transitional provision is being applied in relation to an existing umbrella as at 1 July 2011 and an authorisation order is made for a new sub-fund of the umbrella after that date, this transitional provision shall also be applied to that sub-fund.

(2) A person in (1) need not comply with any rule in COLL that relates to key investor information provided it continues to produce, publish, provide, and meet all other applicable regulatory requirements in relation to, a simplified prospectus for the UCITS scheme as set out in COLL 4.2.3B R (Simplified Prospectus provisions) (as it stands at 30 June 2011), and all references in any rule in COLL to key investor information should be read as references to the simplified prospectus.
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(3) A person in (1) that makes use of this provision from 1 July 2011 may cease to do so in respect of the *UCITS scheme* or any *sub-fund* of the *scheme* at any time before [30 June 2012], but having done so, may not, in relation to that *scheme* or *sub-fund*, make use subsequently of this provision in respect of any *rules* or *guidance* in *COLL*.

(4) A person in (1) that makes use of this provision in accordance with (2) in relation to a *UCITS scheme* or *sub-fund* of the *scheme*, or that ceases to do so in accordance with (3), must do so in respect of all *classes* of *units* in *issue* in that *scheme* or *sub-fund*, whether the *units* of any such *class* were first *issued* before, on or after 1 July 2011.

[Note: article 118(2) of the *UCITS Directive*]

<p>| 19 COLL 4.4.12 R | R | Where a <em>UCITS scheme</em> is to be the <em>receiving UCITS</em> in a proposed <em>UCITS merger</em> and no <em>meeting of unitholders</em> is required to be held under COLL 7.6.2 R (5) and COLL 7.6.2 R (6), the <em>authorised fund manager</em> may satisfy its duty to the <em>unitholders</em> of the <em>receiving UCITS</em> under COLL 7.7.19 R (Method of providing merger information to unitholders) to provide the information by making it public in an appropriate manner. | From 1 July 2011 to 31 December 2013 |
| COLL 4.4.13 | | | |
| COLL 7.7.19 R | | | |</p>
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
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</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Hand-book provision: coming into force</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>COLL 4.4.12 R</td>
<td>G</td>
<td>(1) In determining the appropriate manner of making the information public, the <strong>authorised fund manager</strong> should ensure that:</td>
<td>From 1 July 2011 to 31 December 2013</td>
<td>1 July 2011</td>
</tr>
<tr>
<td></td>
<td>COLL 4.4.13 R</td>
<td></td>
<td>(a) <strong>a unitholder</strong> can obtain the information at a reasonable cost;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>COLL 7.7.19 R</td>
<td></td>
<td>(b) the information is available at reasonable times;</td>
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<td></td>
<td></td>
<td></td>
<td>(c) publication is consistent with the manner in which the <strong>authorised fund manager</strong> makes other types of information about the <strong>scheme</strong> public, so that it is reasonably likely to come to the attention of <strong>unitholders</strong>.</td>
<td></td>
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<td></td>
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<td></td>
<td>(2) Examples of what might be deemed appropriate include one or more of:</td>
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<td></td>
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<td></td>
<td>(a) publication in a national newspaper;</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(b) supply through an advertised local rate or freephone telephone number;</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>(c) publication on the internet; or</td>
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<td></td>
<td></td>
<td></td>
<td>(d) communication to all existing <strong>unitholders</strong>, before the merger has taken effect.</td>
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<td></td>
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<td></td>
<td>(3) In addition to the methods of publication in (2), the <strong>authorised fund manager</strong> should consider publishing appropriate information about the merger in the next long report of the <strong>scheme</strong>. This might include an updated explanation of the matters set out in COLL 7.7.14 R (1) (<strong>Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS</strong>).</td>
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</tr>
</tbody>
</table>

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**Handbook provision:** coming into force

**Transition-provision:** dates in force

**Material to which the transitional provision applies**

**In determining the appropriate manner of making the information public, the **authorised fund manager** should ensure that:**

(a) **a unitholder** can obtain the information at a reasonable cost;

(b) the information is available at reasonable times;

(c) publication is consistent with the manner in which the **authorised fund manager** makes other types of information about the **scheme** public, so that it is reasonably likely to come to the attention of **unitholders**.

(2) Examples of what might be deemed appropriate include one or more of:

(a) publication in a national newspaper;

(b) supply through an advertised local rate or freephone telephone number;

(c) publication on the internet; or

(d) communication to all existing **unitholders**, before the merger has taken effect.

(3) In addition to the methods of publication in (2), the **authorised fund manager** should consider publishing appropriate information about the merger in the next long report of the **scheme**. This might include an updated explanation of the matters set out in COLL 7.7.14 R (1) (**Specific rules regarding the content of merger information to be provided to unitholders of the receiving UCITS**).
<table>
<thead>
<tr>
<th>Material to which the transitional provision applies</th>
<th>Transitional provision</th>
<th>Transition-provision: dates in force</th>
<th>Handbooks-provision: coming into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>COLL 4.2.5R (3)(qa)</td>
<td>Where a <em>scheme</em> meets the conditions in COLL 5.9.3 R (Investment conditions: short-term money market funds) or COLL 5.9.5 R (Investment conditions: money market funds) on 30 June 2011 an <em>authorised fund manager</em> need not include the statement in COLL 4.2.5R (3)(qa).</td>
<td>1 July 2011 to 31 December 2011</td>
<td>1 July 2011 to 31 December 2011</td>
</tr>
<tr>
<td>COLL 4.6.8R(8)(d)</td>
<td>Where a <em>scheme</em> meets the conditions in COLL 5.9.3 R or COLL 5.9.5 R on 30 June 2011 an <em>authorised fund manager</em> need not include the statement in COLL 4.6.8R(8)(d).</td>
<td>1 July 2011 to 31 December 2011</td>
<td>1 July 2011 to 31 December 2011</td>
</tr>
<tr>
<td>COLL 5.9.3 R and COLL 5.9.5 R</td>
<td>The conditions in COLL 5.9.3 RC and COLL 5.9.5 R that a <em>money market fund</em> or a <em>short-term money market fund</em> must satisfy do not apply to investments acquired prior to 1 July 2011.</td>
<td>1 July 2011 to 31 December 2011</td>
<td>1 July 2011 to 31 December 2011</td>
</tr>
<tr>
<td>COLL 8.3.4R (6)</td>
<td>Where a <em>scheme</em> meets the conditions in COLL 5.9.3 R or COLL 5.9.5 R on 30 June 2011 an <em>authorised fund manager</em> need not include the statement in COLL 8.3.4R(6).</td>
<td>1 July 2011 to 31 December 2011</td>
<td>1 July 2011 to 31 December 2011</td>
</tr>
<tr>
<td>COLL 3 to COLL 8</td>
<td>(1) The following chapters and provisions of <em>COLL</em> apply as if the amendments made to those chapters and provisions by the Collective Investment Schemes Sourcebook (ICVC Sub-funds) Instrument 2011 had not been made in respect of an <em>ICVC</em> in the circumstances specified under (2):</td>
<td>From 21 December 2011 to 20 December 2014</td>
<td>21 December 2011 to 20 December 2014</td>
</tr>
<tr>
<td></td>
<td>(a) COLL 3 ;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) COLL 4;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) COLL 5;</td>
<td></td>
<td></td>
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<td></td>
<td>(d) COLL 6 ;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
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</tr>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transi-</td>
<td>Hand-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>tional provision: dates in force</td>
<td>book</td>
</tr>
</tbody>
</table>

(e) COLL 7 (except COLL 7.3.3 G and COLL 7.3.7 R (9)); and

(f) COLL 8.

(2) The chapters and provisions referred to in (1) apply as described in respect of an ICVC until the date on which either:

(a) the instrument of incorporation is amended to contain a statement to effect compliance with paragraph 2(ba) of Schedule 2 to the OEIC Regulations; or

(b) an authorisation order is given to an ICVC which contains in its instrument of incorporation the statement to effect compliance with paragraph 2(ba) of Schedule 2 to the OEIC Regulations.

26  COLL 3 to COLL 8  D

In respect of an ICVC which is amending its instrument of incorporation under COLL TP 1.1R(25)(2)(a), the FCA must be provided with the notification required by regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 in writing. That notification must consist of a statement confirming that the umbrella does not have any agreements or contracts with a third party the provisions of which are inconsistent with paragraph (1) or (2) of regulation 11A of the OEIC Regulations. The notification must be provided at the same time as providing the notification required by regulation 21 of the OEIC Regulations.

From 21 December 2011 to 20 December 2014
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Material to which the transitional provision applies</td>
<td>Transitional provision</td>
<td>Transitional provision: dates in force</td>
<td>Handbook provision: coming into force</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| 27 | COLL 3 to COLL 8 | G | Prior to amending the *instrument of incorporation* as set out in *COLL TP1.1R(25)(2)(a)*, regulation 4(9) of the Open-Ended Investment Companies (Amendment) Regulations 2011 requires notification to be provided to the *FCA* in such form as the *FCA* may direct. The form in which the *FCA* directs this notification is to be provided is set out in TP1.1D(26). | From 21 December 2011 to 20 December 2014 | 21 December 2011 |
# Collective Investment Schemes

## Schedule 1

### Record keeping requirements

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>COLL Transitional Provision 3</td>
<td>Election or revocation to comply with CIS</td>
<td>Details</td>
<td>At election or revocation</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL Transitional Provision 14</td>
<td>Election for early compliance with the instrument</td>
<td>Details</td>
<td>At election</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 4.4.11 R (5)</td>
<td>Minutes of meetings (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 6.2.5 R (1)</td>
<td>Issues and cancellations of units (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 6.4.6 R (4)</td>
<td>Instruments of Transfer (person responsible for the register)</td>
<td>Full details</td>
<td>From registration</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.6 R (1)</td>
<td>General record-keeping obligations (AFM)</td>
<td>Such as to demonstrate compliance with the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.6 R (2)</td>
<td>Units held, acquired or disposed of (AFM)</td>
<td>Daily record of units held, acquired or disposed of by the AFM</td>
<td>As implicit in rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.6 R (3)</td>
<td>Dilution record-keeping obligations (AFM)</td>
<td>How the AFM calculates and estimates dilution and its policy and method for determining the amount of any dilution levy or dilution adjustment</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.6.12 R (3)</td>
<td>General record-keeping obligations (depository)</td>
<td>Such as to demonstrate compliance with the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 6.13.2 R</td>
<td>Portfolio transactions relating to a UCITS</td>
<td>Full details</td>
<td>After transaction</td>
<td>5 years</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Subject of record</td>
<td>Contents of record</td>
<td>When record must be made</td>
<td>Retention period</td>
</tr>
<tr>
<td>--------------------</td>
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</tr>
<tr>
<td>COLL 6.13.3 R</td>
<td>Subscription and redemption orders</td>
<td>Full details</td>
<td>After receipt of order</td>
<td>5 years</td>
</tr>
<tr>
<td>COLL 6.13.4 R</td>
<td>Records referred to in COLL 6.13.2 R and COLL 6.13.3 R</td>
<td>Full details</td>
<td>After termination of authorisation of UCITS management company</td>
<td>Outstanding term of 5 year period</td>
</tr>
<tr>
<td>COLL 8.3.8 R (2)</td>
<td>Minutes of meetings (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 8.5.2 R (3)(e)</td>
<td>General record keeping obligations (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 8.5.2 R (3)(f)</td>
<td>Units held, acquired or disposed of (AFM)</td>
<td>Daily record of units held, acquired or disposed of by the AFM</td>
<td>As implicit from the rules in COLL</td>
<td>6 years</td>
</tr>
<tr>
<td>COLL 8.5.4 R (2)(h)</td>
<td>General record keeping obligation (depository)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL 8.5.10 R (4)</td>
<td>Issues and cancellations of units (AFM)</td>
<td>Full details</td>
<td>As implicit from the rules in COLL</td>
<td>As implicit from the rules in COLL</td>
</tr>
<tr>
<td>COLL TP 1.1.16</td>
<td>Election to comply with COLL 4.5 or COLL 8.3.5 R to COLL 8.3.5D R as those rules were in force on 5 March 2010</td>
<td>Details</td>
<td>At election</td>
<td>6 years</td>
</tr>
</tbody>
</table>
Collective Investment Schemes

Schedule 2
Notification requirements

Sch 2.1 G

This schedule sets out the notification requirements detailed in COLL in respect only of notifications to be provided to the FCA. These notification requirements, it should be noted, are in addition to the notifications which must be made to the FCA under section 251 of the Act (Alteration of schemes and changes of manager or trustee) and under regulation 21 of the OEIC Regulations (The Authority's approval for certain changes in respect of a company).

Sch 2.2 G

1 Notification requirements

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>COLL Transitional provision 3</td>
<td>Election or revocation to comply with CIS</td>
<td>Details and the date from which it is to take effect</td>
<td>At election or revocation</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL Transitional Provision 14</td>
<td>Election for early compliance with the instrument</td>
<td>Details and the date from which it is to take effect</td>
<td>At election</td>
<td>Immediate</td>
</tr>
<tr>
<td>COLL 4.2.3 R (1)(b)</td>
<td>Prospectus and any revisions thereto</td>
<td>Copy provided</td>
<td>Marketing scheme</td>
<td>Before marketing begins</td>
</tr>
<tr>
<td>COLL 4.2.3A R (1)(b)</td>
<td>Copy of prospectus of the master UCITS</td>
<td>Full details, together with any amendments</td>
<td>On publication</td>
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<tr>
<td>COLL 4.2.3B R (1)</td>
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<td>Details in COLL 6.12.3 R (2)(a) and COLL 6.12.3 R (2)(b) and any material alterations thereof</td>
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Collective Investment Schemes

Schedule 3
Fees and other required payments

Sch 3.1 G

The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4

Sch 3.2 G

The provisions relating to fees for collective investment schemes are set out in FEES 1, 2, 3 and 4
Collective Investment Schemes

Schedule 4
Powers exercised

Sch 4.1 G

The following powers and related provisions in or under the Act have been exercised by the FSA to make the rules in COLL:

- Section 138 (General rule-making power)
- Section 139 (Miscellaneous ancillary powers)
- Section 140 (Restriction on managers of certain collective investment schemes)
- Section 145 (Financial promotion rules)
- Section 156 (General supplementary powers)
- Section 238(5) (Restrictions on promotion)
- Section 242 (Applications for authorisation of unit trust schemes)
- Section 247 (Trust scheme rules)
- Section 248 (Scheme particulars rules)
- Section 278 (Rules as to scheme particulars)
- Section 340 (Appointment)
- Paragraph 17 (Fees) of Schedule 1 (The Financial Services Authority)
- Regulation 6 (FSA rules) of the OEIC regulations

Sch 4.2 G

The following powers in the Act have been exercised by the FSA to give the guidance in COLL:

- Section 157(1) (Guidance)

Sch 4.3 G

The following powers in the Act have been exercised by the FSA in COLL to specify and direct:

- Section 270(6)(b) (Schemes authorised in designated countries or territories)
- Section 274 (Applications for recognition of individual schemes)
Collective Investment Schemes

Schedule 5
Rights of action for damages

Sch 5.1 G

The table below sets out the rules in COLL contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a Yes appears in the column headed For private person, the rule may be actionable by a private person under section 138D unless a Yes appears in the column headed Removed. A Yes in the column headed Removed indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

In accordance with The Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a private person is:

(1) any individual, except when acting in the course of carrying on a regulated activity; and

(2) any person who is not an individual, except when acting in the course of carrying on business of any kind;

but does not include a government, a local authority or an international organisation.

The column headed For other person indicates whether the rule is actionable by a person other than a private person, in accordance with those Regulations. If so, an indication of the type of person by whom the rule is actionable is given.

Sch 5.2 G

1. Actions for damages: the New Collective Investment Schemes Sourcebook

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Sch 6.1 G

1. The rules in COLL can be waived by the FCA under sections 138A and 138B, or section 250 of the Act (Modification or waiver of rules) or regulation 7 of the OEIC Regulations (Modification or waiver of FCA rules), except COLL 3.2.8R (UCITS obligations) and COLL 6.9.9 (Restrictions of business for UCITS management companies).

Sch 6.2 G

2. Although the FCA has the formal power of waiver under the Act in relation to these rules, much of COLL implements the requirements of the UCITS Directive by ensuring that relevant authorised funds comply with such requirements. Accordingly, while formal power may exist to waive such UCITS Directive derived rules, the FCA’s ability to do so is severely constrained.
Credit Unions New sourcebook
Credit Unions New sourcebook

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1.1  Application and purpose

CREDS 2  Senior management arrangements, systems and controls
2.1  Application and purpose
2.2  General provisions

CREDS 3  Investment and borrowing
3.1  Application, purpose and interpretation
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4.1  Application and purpose
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### Transitional Provisions and Schedules

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Chapter 1

Introduction
1.1 Application and purpose

Application

1.1.1 FCA PRA

(1) The Credit Unions New Sourcebook, CREDS for short, is the specialist sourcebook for credit unions.

(2) [deleted]

1.1.2 FCA PRA

(1) CREDS covers only the requirements associated with a Part 4A permission to accept deposits. The Conduct of Business sourcebook (COBS) sets out additional requirements for credit unions that are CTF providers in relation to cash deposit CTFs.

(2) Other permissions are covered elsewhere in the Handbook. So, for example, a credit union seeking a permission to undertake a regulated mortgage activity would need to comply with the requirements in the Mortgages and Home Finance: Conduct of Business sourcebook (MCOB), and a credit union seeking a permission to undertake insurance mediation activity in relation to non-investment insurance contracts would need to comply with the requirements in the Insurance: Conduct of Business sourcebook (ICOBS).

(3) The provisions of the Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU) and the Interim Prudential sourcebook for Investment Businesses (IPRU(INV)) may also be relevant to a credit union whose Part 4A permission includes insurance mediation activity or mortgage mediation activity or which is a CTF provider with permission to carry on designated investment business.

1.1.3 FCA PRA

Every credit union is either a version 1 credit union or a version 2 credit union. The rules relating to, for example, borrowing, the payment of dividends on shares, capital and lending to members are different depending on whether a credit union is a version 1 credit union or a version 2 credit union.

Purpose

1.1.4 FCA PRA

CREDS sets out rules and guidance that are specific to credit unions. CREDS 10 refers to other more generally applicable provisions of the Handbook that are likely to be relevant to credit unions with Part 4A permission to accept deposits. For details of these provisions, we would expect credit unions to access the full text in the Handbook.
The status of the provisions in CREDS is indicated by icons containing the letters R, G or E. Please refer to chapter [...] of the Reader’s Guide for further explanation about the significance of these icons. The Reader’s Guide can be found at http://www.fca.org.uk/your-fca/documents/handbook/handbook-readers-guide
Chapter 2

Senior management arrangements, systems and controls
2.1 Application and purpose

Application
This chapter applies to all credit unions.

Purpose
The purpose of this chapter is to provide rules and guidance relating to senior management arrangements, systems and controls that are specific to credit unions with a permission to accept deposits.

This chapter is also intended to remind credit unions that the Senior Management Arrangements, Systems and Controls sourcebook (SYSC) also contains a number of high level rules relating to senior management arrangements, systems and controls designed to have general application to all firms, including credit unions. SYSC 1 and SYSC 4 to SYSC 10 apply to all credit unions in respect of the carrying on of their regulated activities and unregulated activities in a prudential context. SYSC 18 applies to all credit unions without restriction. This chapter does not seek to repeat the requirements of SYSC that are relevant to firms more generally.

The purposes of SYSC, which applies to all credit unions, are:

(1) to encourage directors and senior managers to take appropriate practical responsibility for the arrangements that all firms must put in place on matters likely to be of interest to the appropriate regulator because they impinge on the appropriate regulator’s function under the Act;

(2) to reinforce Principle 3, under which all firms must take reasonable care to organise and control their affairs responsibly and effectively with adequate risk management systems;

(3) to encourage all firms to vest responsibility for effective and responsible organisation in specific directors and senior managers.
2.2 General provisions

Appropriate systems and controls

2.2.1 SYSC 4.1.1 R requires every firm, including a credit union, to have robust governance arrangements, which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

2.2.2 For credit unions, the arrangements, processes and mechanisms referred to in SYSC 4.1.1 R should be comprehensive and proportionate to the nature, scale, and complexity of the credit union’s activities. That is the effect of SYSC 4.1.2 R and SYSC 4.1.2A G.

2.2.3 A small version 1 credit union will not be expected to have the same systems and controls as a large version 2 credit union.

Business plan

2.2.4 A credit union must establish, maintain and implement an up-to-date business plan approved by the committee of management and supply a copy on request to the appropriate regulator.

[Note: a transitional provision applies to this rule: see CREDS TP 1.6.]

2.2.5 Guidance on business planning is given in CREDS 2.2.51 G to CREDS 2.2.58 G.

Policies and procedures manual

2.2.6 A credit union must establish, maintain, and implement an up-to-date and fully documented policies and procedures manual, and supply a copy on request to the appropriate regulator.

[Note: a transitional provision applies to this rule: see CREDS TP 1.6.]

2.2.7 Guidance on documentation of policies and procedures is given in CREDS 2.2.59 G to CREDS 2.2.61 G.
System of control

A credit union must establish, maintain and implement a fully documented system of control.

[Note: a transitional provision applies to this rule: see CREDS TP 1.6.]

Guidance on the documentation of systems of control is given in CREDS 2.2.20 G to CREDS 2.2.23 G.

Internal audit function

(1) A credit union must have an internal audit function (this may be either in-house or outsourced to a third party).

(2) Contravention of (1) may be relied on as tending to establish contravention of SYSC 4.1.1 R (see CREDS 2.2.1 G).

(1) The term 'internal audit function' in CREDS 2.2.10 E refers to the generally understood concept of internal audit within a firm, in other words the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies. The internal audit function is not a controlled function itself, but is part of the systems and controls function (CF28).

(2) Guidance on internal audit is given in CREDS 2.2.40 G to CREDS 2.2.50 G.

Segregation of duties

A credit union should ensure appropriate segregation of duties in order to minimise the risk of financial crime or contravention of requirements and standards under the regulatory system.

Guidance on segregation of duties is given in CREDS 2.2.18 G and CREDS 2.2.19 G.

Committee of management

Under section 4(1) of, and Schedule 1 to, the Credit Unions Act 1979 or article 8(1) of, and Schedule 1 to, the Credit Unions (Northern Ireland) Order 1985, as appropriate, a credit union is required to have a committee of management. The committee of management should be competent to control the affairs of a credit union, and have an appropriate range of skills and experience relevant to the activities carried on by the credit union.

In accordance with Statement of Principle 7 of the Statements of Principle for Approved Persons, it is the responsibility of each individual member of the committee of management to understand, and ensure that the credit union complies with, the requirements of all the relevant Acts, secondary legislation and rules.

(1) As the credit union’s governing body, the committee of management has responsibility for ensuring that the credit union complies with the
requirements of SYSC 4.1.1 R (see CREDS 2.2.1 G and CREDS 2.2.2 G). So, the committee of management has overall responsibility for:

(a) establishing objectives and formulating a business plan;
(b) monitoring the financial position of the credit union;
(c) determining and documenting policies and procedures;
(d) directing and coordinating the work of all employees and volunteers, and ensuring that they are capable and properly trained;
(e) maintaining adequate reserves;
(f) making provision for bad and doubtful debts;
(g) recommending a dividend on shares to members subject to the credit union’s financial position;
(h) ensuring that the credit union complies with all statutory and regulatory requirements; and
(i) ensuring that the credit union complies with the requirements of its registered rules.

(2) [deleted]

2.2.17 [G]

The committee of management should meet at least monthly.

Organisation

2.2.18 [G]

CREDS 2.2.12 G states that all credit unions should ensure appropriate segregation of duties. Duties should be segregated to prevent one individual from initiating, controlling, and processing a transaction (for example, both the approval and the payment of an invoice).

Responsibilities of connected persons (for example, relatives and other close relationships) should be kept entirely separate. They should not hold key posts at the same time as each other. Where this is unavoidable, a credit union should have a written policy for ensuring complete segregation of duties and responsibilities.

Documentation of systems of control

2.2.20 [G]

CREDS 2.2.8 R requires a credit union’s system of control to be fully documented. The documentation helps the committee of management to assess if systems are maintained and controls are operating effectively. It also helps those reviewing the systems to verify that the controls in place are those that have been authorised, and that they are adequate for their purpose.

(1) The committee of management should decide what form this documentation should take, but the committee should have in mind the following points.

(a) Documents should be comprehensive: they should cover all material aspects of the operations of the credit union.

(b) Documents should be integrated: separate elements of the system should be cross-referred so that the system can be viewed as a whole.
(c) Documents should identify risks and the controls established to manage those risks. The controls should be identified and their purpose defined so that their effectiveness can be evaluated.

(d) There should be named persons or posts for each control function and alternatives in case of absence.

(e) Documents should state how the operation of the control is evidenced. Evidence might include signatures, records and registers. Documents should also state for how long that evidence is to be retained, taking account of § SYSC 9.1.

(f) Documents should be unambiguous. Instructions should be clear and precise, avoiding expressions such as "normally" and "if possible".

(g) Documents should be practical and easy to consult and use when operating and reviewing systems.

(h) Documents should be up to date. There should be an accurate description of the function that the control is to address. When changes are made to the function, the appropriate systems of control need to be updated and documented at the same time.

(2) The committee of management should, from time to time, seek confirmation that the systems of control are being complied with.

Documentation should not be restricted to "lower level" controls applied in processing transactions, but should also cover "high level" controls including:

(1) identifying those powers to be exercised only by the committee of management, and the powers delegated to others;

(2) the purpose, composition and reporting lines of sub-committees, and senior managers to whom responsibilities are delegated;

(3) the specific roles and responsibilities of individual officers;

(4) the timing, form and purpose of meetings of the committee of management and sub-committees, and the way in which policies and decisions are recorded and their implementation monitored.

The documentation of IT controls should be integrated within the overall documentation of a credit union’s system of control.

Accounting records and systems

§ SYSC 9.1.1 R requires that a credit union takes reasonable care to make and retain adequate records of all matters governed by the Act, secondary legislation under the Act, or rules (including accounting records). These records should be capable of being reproduced in the English language and on paper.

A credit union should have appropriate systems in place to fulfil its obligations with respect to adequacy, access, periods of retention, and security of records.
The main reasons why a credit union should maintain adequate accounting and other records are:

1. to provide the committee of management with adequate financial and other information to enable it to conduct its business in a prudent manner on a day-to-day basis;

2. to safeguard the assets of the credit union and the interests of members and persons too young to be members;

3. to assist officers of the credit union to fulfil their regulatory and statutory duties in relation to the preparation of annual accounts;

4. to provide the committee of management with sufficient timely and accurate information to assist them to submit the information required or requested by the appropriate regulator.

When forming their opinion of whether the accounting and other records are adequate, the committee of management should satisfy itself that they capture and record on a timely basis, and in an orderly fashion, every transaction. The accounting and other records should provide sufficient information in respect of each transaction to explain:

1. its nature and purpose;

2. the asset or liability, actual and contingent, which arises (or may arise) from it;

3. the income or expenditure, current and deferred, which arises from it.

The committee of management should satisfy itself that the records are maintained in an integrated and orderly manner to disclose, with reasonable accuracy and promptness, the state of the business at any time.

The compliance function

1. Depending on the nature, scale and complexity of its business, it may be appropriate for a credit union to have a separate compliance function.

2. The organisation and responsibilities of a compliance function should be documented.

3. A compliance function should be staffed by an appropriate number of competent staff who are sufficiently independent to perform their duties objectively. It should be adequately resourced and should have unrestricted access to the credit union's relevant records as well as ultimate recourse to its governing body.

Guidance on compliance is located in SYSC 6.1.3 R.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 6.1.3 R is to be read as guidance rather than as a rule, and as if "should" appeared in that provision instead of "must".]
Some important compliance issues include:

(1) insurance against fraud and dishonesty;
(2) arrangements for the prevention, detection and reporting of money laundering;
(3) establishing and maintaining a satisfactory system of control;
(4) keeping proper books of account;
(5) computation and application of profits;
(6) investment of surplus funds;
(7) capital requirements;
(8) liquidity requirements;
(9) limits on shares and loans;
(10) maintenance of membership records;
(11) submission of financial reports to the regulator;
(12) approved persons regime;
(13) payment of regulatory fees.

Management information

Guidance on management information is located in SYSC 7.1.4 R.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 7.1.4 R is to be read as guidance rather than as a rule, and as if "should" appeared in that provision instead of "must".]

A credit union should maintain information systems to enable the committee of management to direct and control the credit union's business effectively, and to provide the information required by the appropriate regulator.

The committee of management should be satisfied that:

(1) the information available is sufficient for the proper assessment of the potential risks for the credit union, and in order to determine its need for capital and liquidity;
(2) the information available is sufficiently comprehensive to provide a clear statement of the performance and financial position of the credit union;
(3) management information reports are prepared with sufficient frequency;
(4) sufficient attention is focused on key factors affecting income and expenditure and that appropriate performance indicators are employed;

(5) actual performance is compared with planned and previous performance.

2.2.35 FCA PRA

In forming a view on whether the management information system is sufficiently comprehensive, the committee of management should consider whether, where relevant, the substance of reports provides a clear statement of:

(1) the capital position;

(2) the liquidity position;

(3) profits and losses, assets and liabilities, and flow of funds;

(4) loans, arrears, and provisions.

The matters listed in CREDS 2.2.35 G should be compared against limits, ratios and other parameters set by the committee of management, as well as regulatory requirements.

Information for the PRA

2.2.37 FCA PRA

Credit unions should ensure that quarterly and annual returns required by SUP are reviewed at a sufficiently senior level before they are submitted to the appropriate regulator. The review should check for consistency between different returns, between various tables on the same return, and between information prepared for the committee of management.

Personnel

2.2.38 FCA PRA

Guidance on employees and agents is located in SYSC 5.1.2 G.

2.2.39 FCA PRA

A credit union should identify present and future staffing requirements (including volunteers and paid staff) and make appropriate plans for their recruitment and training.

Internal Audit

2.2.40 FCA PRA

CREDS 2.2.10 E states that a credit union should have an internal audit function.

2.2.41 FCA PRA

Guidance on internal audit and audit committees (otherwise known as the supervisory committee) is located in SYSC 6 and SYSC 4.1.11 G.

2.2.42 FCA PRA

Depending upon the scale and nature of the credit union's activities, it may be appropriate for the audit committee to delegate the task of monitoring the effectiveness and appropriateness of its systems and controls to an employee or other third party.

2.2.43 FCA PRA

The purposes of an internal audit are:

(1) to ensure that the policies and procedures of the credit union are followed;
(2) to provide the committee of management with a continuous appraisal of the overall effectiveness of the control systems, including proposed changes;

(3) to recommend improvements where desirable or necessary;

(4) to determine whether the internal controls established by the committee of management are being maintained properly and operated as laid down in the policy, and comply with relevant Acts, secondary legislation, rules, policies and procedures;

(5) to ensure that accounting records are prepared promptly and accurately, and that they are in order;

(6) to assess whether financial and operating information supplied to the committee of management is accurate, pertinent, timely, and complete.

The internal audit function (see CRA 2.2.11G) should develop an audit plan, covering all aspects of the credit union’s business. The audit plan should identify the scope and frequency of work to be carried out in each area. Areas identified as higher risk should be covered more frequently. However, over a set timeframe (likely to be one year) all areas should be covered. Care should be taken to avoid obvious patterns in assessing the different areas of the credit union’s business, so that the audit plan produces a representative snapshot of the operation and effectiveness of the credit union’s internal systems and controls, procedures and policies.

The internal audit work programme should include items such as:

(1) verification of cash (counting and reconciliation) without prior notification;

(2) bank reconciliation (checking records against bank statements);

(3) verification of passbooks or account statements;

(4) checking for compliance with policies and procedures;

(5) checking for compliance with relevant Acts, secondary legislation and rules;

(6) checking minutes and reports of the committee of management and other sub-committees for compliance, and assessing regularity and completeness;

(7) checking loan applications;

(8) verification of the credit union’s assets and investments.

The key elements of a satisfactory system of internal audit include the following:

(1) Terms of reference. These should be specified with precision and include, amongst other things, scope and objectives of the audit committee and the internal audit function (see CRA 2.2.11G), access to records, powers to obtain information and explanations for officers, and reporting requirements. These should be approved by the committee of management.
(2) Risk analysis. Key risks in each area of the credit union’s business should be identified. The adequacy of the specific controls put in place to address those risks should be assessed.

(3) Internal audit plan. This should be developed on the basis of the risk analysis.

(4) Detailed programmes. These should be based on the internal audit plan, together with the controls and their objectives specified in the control documentation. Each programme should be comprehensive, specifying the frequency with which the various parts of the programme are to be carried out and how the work is to be performed.

(5) Working papers. These should be maintained to evidence who performed the work, how it was controlled and supervised, and to record the conclusions reached. They should be cross referenced to reports made and action taken.

(6) System of reporting. Formal reports should be submitted at the completion of each aspect of programmed work, stating the areas covered together with any recommendations and conclusions reached.

The internal audit function (see CREDS 2.2.11 G) should be independent of all of the functions it inspects.

The committee of management should be satisfied that the status and reporting relationship of the chairman of the audit committee is sufficient to maintain the independence and objectivity of the function.

The qualifications, experience and training of individuals performing the internal audit function (see CREDS 2.2.11 G) should be adequate in relation to its objectives.

The committee of management should be satisfied that the internal audit function (see CREDS 2.2.11 G) is being properly carried out. In order to review the overall effectiveness of the internal audit function it should consider the following:

1. the adequacy and scope of planning;
2. the adequacy and scope of work performed in relation to the plans and programmes;
3. the regularity and level of reporting on matters arising from the inspections;
4. the disposal of points and recommendations raised, and reasons for the rejection of any major points;
5. a review of the overall effectiveness of the internal audit function.

Business planning

CREDS 2.2.4 R requires that a credit union maintains a current business plan.
2.2.52 Version 2 credit unions should submit a copy of their business plan to the PRA. A version 2 credit union making any significant changes to the business plan should provide the PRA with a copy of the amended plan as soon as possible after it has been adopted.

2.2.53 Guidance on business strategy is located in SYSC 6.1.2 R and SYSC 7.1.2 R.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 6.1.2 R and SYSC 7.1.2 R are to be read as guidance rather than as rules, and as if "should" appeared in those provisions instead of "must".]

2.2.54 The committee of management should have a satisfactory planning system to provide a framework for growth and development of the credit union, and to enable it to identify, measure, manage and control risks of regulatory concern.

2.2.55 The business plan should cover a period of three years from the current financial year, in other words the remainder of the current financial year and the two following financial years.

2.2.56 The planning system should be defined clearly, documented appropriately, and planning related tasks and decision-making responsibilities allocated clearly within the credit union.

2.2.57 The conclusions, recommendations, projections and assumptions set out in the business plan should be supported by analysis, based on adequate data, and properly documented for comparison with actuals.

2.2.58 The committee of management should consider the range of possible outcomes in relation to various risks. These risks are increased when a credit union provides ancillary services such as issuing and administering means of payment and money transmission, which result, in particular, in higher liquidity and operational risks.

2.2.59 Documentation of policies and procedures

CREDS 2.2.6 R requires that a credit union maintains a manual of its policies and procedures.

2.2.60 Version 2 credit unions should submit a copy of their policy and procedures manual to the PRA. A version 2 credit union making any significant changes to their policies or procedures should provide the PRA with a copy of the amended manual as soon as possible after it has been adopted.

2.2.61 The policy and procedures manual should cover all aspects of the credit union’s operations, including matters such as:

(1) cash handling and disbursements;

(2) collection procedures;
(3) lending, including large exposures (see CREDS 7.1 to CREDS 7.5);

(4) arrears management (see CREDS 7.2.9 G to CREDS 7.2.10 G);

(5) provisioning (see CREDS 7.5);

(6) liquidity management (see CREDS 6);

(7) financial risk management (see CREDS 3);

(8) money laundering prevention (see SYSC 6.3);

(9) internal audit (see CREDS 2.2.40 G to CREDS 2.2.50 G);

(10) information technology (see CREDS 2.2.23 G);

(11) business continuity, otherwise known as disaster recovery (see CREDS 2.2.62 G to CREDS 2.2.64 G);

(12) marketing;

(13) training;

(14) connected persons and managing conflicts of interest (see CREDS 2.2.19 G);

(15) complaints handling (see DISP 1).

**Business continuity**

Guidance on business continuity is located in SYSC 4.1.6R to SYSC 4.1.8 G.

[Note: As explained in SYSC 1 Annex 1.3.3G, SYSC 4.1.6R is to be read as guidance rather than as a rule, and as if "should" appeared in that provision instead of "must".]

A credit union should put in place contingency arrangements to ensure that it could continue to operate and meet its regulatory requirements in the event of an unforeseen interruption that may otherwise prevent the credit union from operating normally (for example, if there was a complete failure of IT systems or if the premises were destroyed by fire).

Business continuity arrangements should be reviewed and tested regularly in order to ensure their effectiveness.
Chapter 3

Investment and borrowing
3.1 Application, purpose and interpretation

3.1.1 Application

This chapter applies to all credit unions.

3.1.2 Purpose

(1) The rules and guidance contained in this chapter are designed to address risks that can arise from the structure of a credit union's balance sheet.

(2) These risks include the risk that a credit union's income is not sufficiently large to cover its funding, operational and other costs, and the risk that a credit union may not be able to renew or replace wholesale funding at an affordable rate.

3.1.3 Interpretation

For the purposes of this chapter:

(1) the maturity of a security or loan is the last or only date on which it will be repayable by or under its terms; and

(2) surplus funds means funds not immediately required for a credit union's accepting deposits, lending and ancillary purposes.
3.2 Investment

Types of investment

Subject to the general limitations on its powers contained in the Credit Unions Act 1979 or the Credit Unions (Northern Ireland) Order 1985 (as appropriate) and to the limitations contained in § CREDS 3.2.2 R and § CREDS 3.2.3 R, a credit union may invest its surplus funds and funds serving liquidity purposes only in the following types of investment:

(1) deposits or loans to a UK domestic firm with Part 4A permission to accept deposits;

(2) deposits or loans to an institution which is authorised in any other EEA State to accept deposits;

(3) sterling-denominated securities issued by the government of any EEA State;

(4) fixed-interest sterling-denominated securities guaranteed by the government of any EEA State, provided that any guarantee is unconditional in respect of the payment of both principal and interest on those securities.

[Note: a transitional provision applies to this rule: see § CREDS TP 1.7.]

Maturity of investments

Any securities invested in, or loans made, in accordance with § CREDS 3.2.1 R by a version 1 credit union must have a maturity date of not more than 12 months from the date on which the investment is made.

[Note: a transitional provision applies to this rule: see § CREDS TPs 1.8 and 1.9.]

Any securities invested in, or loans made, in accordance with § CREDS 3.2.1 R by a version 2 credit union must have a maturity date of not more than five years from the date on which the investment is made.

[Note: a transitional provision applies to this rule: see § CREDS TP 1.10.]
Cash in custody of officers

Surplus funds not invested by a credit union in accordance with ■ CREDS 3.2.1 R to ■ CREDS 3.2.3 R must be held as cash in the custody of officers of the credit union.

Investment conditions no longer satisfied

Where under ■ CREDS 3.2.1 R to ■ CREDS 3.2.3 R above, a firm or another institution ceases to satisfy the conditions necessary for a credit union to invest with it or lend to it, and any funds of a credit union are with that firm or other institution, the credit union must take all practicable steps to call in and realise that investment or loan within three months of that cessation, or, if that is not possible, as soon after the end of that period as possible.

Transactions between credit unions

(1) A credit union may accept a loan from another credit union (section 10(1) of the Credit Unions Act 1979) or article 27(1) of the Credit Unions (Northern Ireland) Order 1985 (as appropriate).

(2) ■ CREDS 3.2.2 R to ■ CREDS 3.2.3 R apply to loans between credit unions, except for subordinated loans qualifying as capital under ■ CREDS 5.2.1 R (4). (See ■ CREDS 3.2.1 R and ■ CREDS 5.2.8 R (2).)

(3) ■ CREDS 5.2.1 R to ■ CREDS 5.2.9 G apply to subordinated loans between credit unions qualifying as capital under ■ CREDS 5.2.1 R (4).

(4) ■ CREDS 7 (Lending) (which covers loans to members) does not apply to loans between credit unions (see ■ CREDS 7.1.1 R). However, in relation to those loans, credit unions should have regard to the principles outlined in ■ CREDS 7.4.6 G and ■ CREDS 7.5 (Provisioning).

(5) ■ CREDS 6.3.4 R (2) applies to loans between credit unions in relation to liquidity.

Loans between credit unions should only be arranged after careful consideration by both parties. For example:

(1) the borrower should consider the financial implications of relying on such borrowing in order to lend to members, or to finance share withdrawals; and

(2) the lender should assess the risk of late and non-repayment arising from the borrower’s own liquidity and credit risks, and keep the aggregate of its loans to other credit unions to a very modest level.
3.3 Borrowing and financial risk management

Borrowing

3.3.1 A credit union must not borrow from a natural person, except by subordinated loan qualifying as capital under CREDS 5.2.1 R (4).

3.3.2 CREDS 3.3.1 R does not apply to borrowing from a body corporate. A loan made to a credit union by a body corporate can either be a subordinated loan (providing regulatory capital within CREDS 5.2.1 R (1)(c) ) or a senior loan (providing ordinary funding, but not constituting regulatory capital).

3.3.3 The borrowing of a version 1 credit union must not exceed, except on a short-term basis, an amount equal to 20% of the total non-deferred shares in the credit union.

3.3.4 (1) The borrowing of a version 1 credit union must not exceed an amount equal to 20% of the total non-deferred shares in the credit union at the end of more than two consecutive quarters.

(2) Contravention of CREDS 3.3.4 E (1) may be relied on as tending to indicate contravention of CREDS 3.3.3 R.

3.3.5 The borrowing of a version 2 credit union must not at any time exceed an amount equal to 50 per cent of the total non-deferred shares in the credit union.

3.3.6 A credit union must not count subordinated debt obtained by the credit union and forming part of its capital (see CREDS 5.2.1 R) towards the borrowing limits under CREDS 3.3.3 R and CREDS 3.3.5 R.

Financial risk management policy statement

A version 2 credit union must establish, maintain and implement an up-to-date financial risk management policy statement approved by the committee of management.

[Note: a transitional provision applies to this rule: see CREDS TP 1.6.]
This policy should address both interest rate and funding risk. It should cover aggregate limits on holdings of investments and borrowings from sources other than members. It should deal with avoidance of funding concentrations (both source and time-band concentrations) and should detail the organisational arrangements, systems and controls in respect of these matters.

A credit union's committee of management should review and approve its financial risk management policy at least once a year, and more frequently if necessary, especially in the light of significant changes in business.

A version 2 credit union must send to the PRA a copy of its financial risk management policy statement as soon as reasonably practicable after it has been approved by the committee of management.
Chapter 4

Shares and deposits
4.1 Application and purpose

Application

This chapter applies to all credit unions.

Purpose

The purpose of this chapter is to provide for limits on holdings of shares and deposits, joint accounts, dividends and insurance cover (based on the aggregate value of shares and deposits).
4.2 Shares

**Maximum shareholdings**

(1) A credit union must not permit a member to have or claim any interest in the total non-deferred shares of the credit union, exceeding the greater of:

(a) £ 15,000 ; or
(b) 1.5 per cent of the total non-deferred shares in the credit union.

(2) [deleted]

Where:

(1) there is an increase in the percentage of the total non-deferred shares in the credit union held by a member; and

(2) this is the result of a reduction in the total non-deferred shares in the credit union occurring after the time at which that member last acquired shares, or an interest in the shares, of the credit union, other than deferred shares;

that increase in the percentage of the total non-deferred shares in the credit union held by that member must be disregarded for the purposes of the limits in [CREDS 4.2.1(R) (2) and CREDS 4.2.5(R)].

**Joint accounts**

There is no restriction on the number of members who may jointly hold shares in a credit union.

(1) For the purpose only of the limits in [CREDS 4.2.1(R) (1),

   [CREDS 7.3.2(R) and CREDS 7.3.6(R)] the interest of a member in a
joint account must be treated as the percentage represented by that individual member as a percentage of the total number of members holding an interest in the joint account.

(2) [deleted]

**Dividends on shares**

A version 1 credit union must not:

(1) pay different dividends on different accounts unless:
   
   (a) at the time of the payment of any dividends it has a capital-to-total assets ratio of at least 5%; and
   
   (b) the payment of any of those dividends does not reduce the capital-to-total assets ratio to below 5%; or

(2) pay dividends out of interim profits more than once a year.

A version 2 credit union is permitted to:

(1) pay different dividends on different accounts; and

(2) pay dividends out of interim profits more than once a year.
4.3 Deposits

(1) A credit union must not accept deposits except:
   (a) by way of subscription for its shares from persons who may lawfully be admitted to membership of the credit union under the Credit Unions Act 1979 or the Credit Union (Northern Ireland) Order 1985 (as appropriate) and the rules of the credit union; or
   (b) from persons too young to be members under (2); or
   (c) as loans from persons under CREDS 3.3.1 R to CREDS 3.3.2 G.

(2) A credit union must not accept deposits exceeding the greater of £10,000 or 1.5 per cent of the total non-deferred shares in the credit union from a person who is under the age at which, by virtue of (for Great Britain credit unions) any provision of the credit union’s rules, (for Northern Ireland credit unions) under article 15 of the Credit Unions (Northern Ireland) Order 1985 or any provision of the credit union’s rules, or otherwise, he may lawfully become a member of the credit union, unless the deposits are held in a CTF in which case the credit union may accept a larger deposit.

Credit unions that provide CTFs should ensure that under their rules depositors under the age of 18 whose deposits are held within a CTF continue to be treated as juvenile depositors until the age of 18. This will provide for the fact that CTF account holders may not withdraw any money from the CTF until they reach the age of 18, in contrast to the position in relation to other deposits which become shares and may be withdrawn earlier.

CREDS 3.3.1 R and CREDS 4.3.1 R are intended to ensure that the liberalisation of credit union borrowing (CREDS 3.3.2 G) does not have the unintended effect of undermining the common bond concept by allowing credit unions to operate deposit accounts for natural persons who do not qualify for membership.
4.4 Insurance against fraud or other dishonesty

A credit union must at all times maintain in force a policy of insurance complying with \[\text{CREDS } 4.4.2 \text{R}\].

[Note: a transitional provision applies to this rule: see \[\text{CREDS TP } 1.11\].]

In order to comply with \[\text{CREDS } 4.4.1 \text{R}\], a policy of insurance (subject to the exception in \[\text{CREDS } 4.4.3 \text{R}\]):

1. must insure the credit union in respect of every description of loss suffered or liability incurred by reason of the fraud or other dishonesty of any of its officers or employees;
2. must so insure the credit union up to the limits set out in \[\text{CREDS } 4 \text{Annex } 1 \text{R}\] in respect of any one claim, except that the liability of the insurer may be restricted to the amounts set out in \[\text{CREDS } 4 \text{Annex } 1 \text{R}\] in respect of the total of the claims made in any one year; and
3. must not provide, in relation to any claim, for any amount greater than one per cent of the limits on any one claim set out in \[\text{CREDS } 4 \text{Annex } 1 \text{R}\] to be met by the credit union.

From the losses and liabilities against which a policy complying with \[\text{CREDS } 4.4.2 \text{R}\] must insure, there must be excepted all loss suffered or liability incurred by a credit union other than direct pecuniary loss discovered during the currency of the policy of insurance or within 18 months of the date on which either the policy of insurance lapses, or the duties of the officer or employee concerned are terminated, whichever occurs first.

The "aggregate value" in \[\text{CREDS } 4 \text{Annex } 1 \text{R}\] comprises the shares and deposits (including those held in a CTF) referred to in \[\text{CREDS } 4.3.1 \text{R } (1)(a)\] and \[\text{CREDS } 4.3.1 \text{R } (b)\].

The tables in \[\text{CREDS } 4 \text{Annex } 1 \text{R}\] set out the minimum levels of insurance cover required by a credit union. It is prudent for a credit union to consider whether additional cover:

1. is needed for its own particular circumstances; and
(2) should be obtained to cater for actual or projected growth in the "aggregate value" (see paragraph 1 of CREDS 4 Annex 1 R) between "relevant dates" (see paragraph 3 of CREDS 4 Annex 1 R).
Insurance against fraud or other dishonesty (see CREDS 4.4.1R)

<table>
<thead>
<tr>
<th>Column (1)</th>
<th>Column (2)</th>
<th>Column (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aggregate value of share subscriptions and other deposits received and not repaid (the &quot;aggregate value&quot;)</td>
<td>Cover required in respect of any one claim</td>
<td>Cover required in respect of total claims made in any one year</td>
</tr>
<tr>
<td>Row (A) Less than £10,000</td>
<td>The higher of £500 or 50 per cent of the aggregate value</td>
<td>The higher of £1,000 or 100 per cent of the aggregate value</td>
</tr>
<tr>
<td>Row (B) £10,000 to £100,000</td>
<td>The higher of £5,000 or 20 per cent of the aggregate value</td>
<td>100 per cent of the aggregate value</td>
</tr>
<tr>
<td>Row (C) More than £100,000</td>
<td>The higher of £20,000 or 15 per cent of the aggregate value</td>
<td>The higher of £100,000 or 75 per cent of the aggregate value</td>
</tr>
<tr>
<td>Row (D) More than £1,000,000</td>
<td>£150,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £2,000,000</td>
<td>£750,000 plus 5 per cent of the aggregate value over £1,000,000, subject to a maximum of £4,000,000</td>
</tr>
</tbody>
</table>

Notes:

(1) In relation to a credit union which, at the relevant date, has accepted and not repaid share subscriptions and other deposits of the aggregate value stipulated in column (1) of the table in this Annex, the limit in respect of any one claim is the amount appearing in the corresponding part of column (2); and the amount in respect of the total of claims made in any one year is the amount appearing in the corresponding part of column (3).

(2) For the purposes of this Annex, "the relevant date" is either the date of inception or renewal of the policy of insurance, or such other date as the credit union determines, provided that the relevant date in each year subsequent to the first must be not more than one year after the relevant date in the preceding year.
5.1 Application and purpose

Application

This chapter applies to all credit unions except for CREDS 5.3, which applies only to version 1 credit unions, and CREDS 5.4, which applies only to version 2 credit unions.

Purpose

This chapter amplifies Principle 4, under which a firm must maintain adequate financial resources, and the threshold condition that a firm’s resources must be adequate in relation to the regulated activities that it carries on.

The purpose of setting capital requirements is to ensure that a credit union has an appropriate level of capital available to absorb unexpected losses.

The capital and net worth requirements set out in this chapter represent the minimum requirements that a credit union must comply with. A credit union should decide for itself the amount of capital that it needs to hold over and above these minimum standards proportionate to its scale of operations and its risk profile.

The PRA may require a credit union to hold minimum amounts of capital greater than those set out in this chapter where it considers that particular circumstances make that appropriate.

In addition to the capital requirements set out in this chapter, section 7A of the Credit Unions Act 1979 provides that a Great Britain credit union may issue interest-bearing shares only if, among other things, its most recent year end balance sheet shows that it holds reserves of at least £50,000 or 5% of its total assets, whichever is greater, and subject to compliance with any conditions specified by the PRA in a direction for the purposes of section 7A(1)(e) of the Credit Unions Act 1979.

The Credit Unions (Northern Ireland) Order 1985 does not provide for a Northern Ireland credit union to issue interest-bearing shares or deferred shares.
5.2 Components of capital

(1) The following are included in the meaning of 'capital' for the purposes of this chapter:
   (a) audited reserves;
   (b) interim net profits;
   (c) deferred shares;
   (d) subordinated debt meeting the requirements set out at (4);
   (e) initial capital; and
   (f) revaluation reserves, arising from the differences between book values and the current market values of property fixed assets which:
      (i) meet the requirements in (6) to (7); and
      (ii) are subject to the limit in (8).

(2) Audited reserves are audited accumulated profits or losses, or both, retained by a credit union after payment of tax, dividends and interest on deposits. Reserves also include other realised gains and gifts of capital, for example from a sponsoring organisation. Deferred shares are included in the meaning of 'capital' but must not be counted twice in the calculation of capital. Where a credit union's audited reserves include sums, equal to the amount paid on deferred shares subscribed for in full, and transferred to the reserves in accordance with section 7(6) of the Credit Unions Act 1979, that amount must not also be counted separately under (1)(c).

(3) Interim net profits are interim profits net of tax and anticipated dividends.

(4) To be included in the calculation of capital, subordinated debt must meet the following conditions:
   (a) the maturity of the loan must be more than five years from the date on which the loan is made;
(b) the subordination provisions provide that the claims of the subordinated creditors rank behind those of all unsubordinated creditors including the credit union's shareholders;

(c) to the fullest extent possible, creditors waive their rights to set off amounts they owe the credit union against subordinated amounts owed to them by the credit union;

(d) the only events of default are non-payment of any interest or principal under the debt agreement or the winding-up of the credit union;

(e) the remedies available to the subordinated creditor in the event of default in respect of the subordinated debt are limited to petitioning for the winding up of the credit union or proving for and claiming in the liquidation of the credit union;

(f) the subordinated debt must not become due and payable before its stated final maturity date except on an event of default complying with (d);

(g) the terms of the subordinated debt must be set out in a written agreement or instrument that contains terms that provide for the above conditions;

(h) the debt must be unsecured and fully paid up.

(5) Initial capital is a credit union's capital at the time it is given Part 4A permission to accept deposits, but this does not apply in cases where the credit union is treated as having such a permission on credit unions day. Initial capital consists of a credit union's assets less its liabilities. For this purpose, liabilities do not include the items set out in (1)(a) to (c).

(6) To be included in the calculation of capital, revaluation reserves must meet the following conditions:

(a) the credit union must apply the revaluation method to all of its property fixed assets and not selectively;

(b) the values must result from regular professional valuations of each property;

(c) if professional valuations are not carried out annually, there must be:

(i) a rolling programme such that no professional valuation of a property is more than five years old;

(ii) in the intervening year(s) in which a property is not professionally valued, an interpolation of value by the Board which takes into account any decline in property
values disclosed by valuations of other properties in that year;

(d) any increase of revaluation reserve must be supported by a professional valuation.

(7) Subject to the conditions in (6), and the limit in (8), the amount of revaluation reserve used for the calculation of capital must be:

(a) the amount standing to the credit of any such reserve in the balance sheet in the most recent annual return to have been sent to the PRA under § SUP 16.12.5 R (see § CREDS 8.2.3 G); or

(b) the amount of any such reserve in the accounting records of the credit union, for the time being, whichever is the lesser amount.

(8) The amount of revaluation reserve included in the calculation of capital must not represent more than 25 per cent of the total of capital resources in (1)(a) to (f).

The written agreement or instrument referred to in § CREDS 5.2.1R (4)(g) must contain a prominent statement that the subordinated debt is not covered by the compensation scheme.

The effect of § CREDS 5.2.1 R (4)(a) is that the shortest permissible period for a subordinated loan qualifying as capital under § CREDS 5.2.1 R (4)(a) is five years and one day.

Subordinated debt is due and payable only in accordance with § CREDS 5.2.1 R (4). However, this rule does not prevent the debt from being issued on terms which permit the credit union, in accordance with a board resolution, to repay the debt. The decision to repay the debt should be genuinely at the instance of the credit union’s board. The credit union should satisfy itself that the remaining capital would be adequate for the credit union’s present and future foreseeable needs. The credit union should notify the PRA at least one month in advance of its intention to repay the debt (thereby giving the PRA the opportunity to raise objections to the proposed repayment). If repayment is proposed within the first five years, and the PRA considers that the remaining capital may not be adequate, then the PRA is likely to consider exercising its own-initiative powers to ensure that the credit union continues to satisfy the threshold conditions.

The effect of § CREDS 5.2.1 R (8) is that no more than 25 per cent of a credit union’s regulatory capital may consist of amounts deriving from the revaluation of property, however large the amount standing to the credit of the credit union’s revaluation reserve.

Negative reserves and any interim net losses must be deducted from capital.

The amount of any subordinated loan counting towards a credit union’s regulatory capital must, over its final four years to maturity, be written
down by 20% of the amount of the loan per year (see Table at CREDS 5.2.7 R.)

Writing down subordinated loans over final four years

This table belongs to CREDS 5.2.6 R

<table>
<thead>
<tr>
<th>Years to maturity</th>
<th>Amount of loan counting towards capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than 4</td>
<td>100%</td>
</tr>
<tr>
<td>Less than and including 4 but more than 3</td>
<td>80%</td>
</tr>
<tr>
<td>Less than and including 3 but more than 2</td>
<td>60%</td>
</tr>
<tr>
<td>Less than and including 2 but more than 1</td>
<td>40%</td>
</tr>
<tr>
<td>Less than and including 1</td>
<td>20%</td>
</tr>
</tbody>
</table>

(1) When a credit union makes a subordinated loan to another credit union qualifying as capital under CREDS 5.2.1 R (4)(a), the full amount of the loan (not the amount counting towards the borrower's capital under CREDS 5.2.7 R) must be deducted from the lender's capital.

(2) A subordinated loan within CREDS 5.2.1 R (4)(a) is not an investment under CREDS 3.2.1 R.

The effect of CREDS 5.2.8 R is that the maturity limits in CREDS 3.2.2 R and CREDS 3.2.3 R do not apply to subordinated loans made by a credit union.
5.3 Version 1 credit unions

Requirement to maintain capital assets ratio

A version 1 credit union must at all times maintain a capital-to-total assets ratio of at least 3%.

[Note: a transitional provision applies to this rule: see 6 CREDS TP 1.1.]

Building reserves

A version 1 credit union must establish and maintain a general reserve.

If, at the end of any year of account, the amount in its general reserve stands at less than 10% of its total assets, a version 1 credit union must transfer to its general reserve at least 20% of its profits for that year (or such lesser sum as is required to bring the amount in its general reserve up to 10% of its total assets).

[Note: a transitional provision applies to this rule: see 6 CREDS TP 1.12.]

For the purposes of 6 CREDS 5.3.3 R 'profits' means the profits resulting from the operations of a credit union in the year of account in question after deduction of all operating expenses (including payment of interest) and after making provision for the depreciation of assets, for tax liabilities and for bad and doubtful debts, but before the payment of any dividend.

A version 1 credit union may not transfer from its general reserve where its general reserve stands at less than 10% of its total assets.

[Note: a transitional provision applies to this rule: see 6 CREDS TP 1.12.]

Minimum initial capital

A credit union must have adequate initial capital taking into account the nature, scale and complexity of its business and expected early expenses.

(1) A version 1 credit union should have initial capital of at least £10,000.

(2) Contravention of (1) may be relied on as tending to establish contravention of 6 CREDS 5.3.6 R.
For the meaning of 'initial capital' see CREDS 5.2.1 R (5).

It should be noted that the requirement in CREDS 5.3.6 R does not affect a credit union’s obligations to meet the other capital requirements that apply to it. The ability of a credit union to comply on a continuing basis with the other capital requirements that apply to it will be a central factor for consideration in any application for authorisation.

**Capital requirement for certain version 1 credit unions**

1. A version 1 credit union must not lend to a member more than £7,500 in excess of the attached shares held by that member, unless it has a capital-to-total assets ratio of at least 5%.

2. A credit union which is owed by a member a total amount greater than £7,500 in excess of the attached shares held by that member must maintain at all times, while such an amount is outstanding, a capital-to-total assets ratio of at least 5%.

CREDS 5.3.10 R (2) does not have the effect of invalidating existing loans if the capital-to-assets ratio falls below 5%.

CREDS 7.5.1 R and CREDS 7.5.2 R mean that bad and doubtful debts must be taken into account in establishing the capital-to-assets ratio.

**Capital requirements for large version 1 credit unions**

A version 1 credit union with total assets of more than £5 million or a total number of members of more than 5,000, or both, must maintain at all times a capital-to-total assets ratio of at least 5%.

CREDS 7.5.1 R and CREDS 7.5.2 R mean that bad and doubtful debts must be taken into account in establishing the capital-to-assets ratio.

1. A version 1 credit union with total assets of more than £10 million or a total number of members of more than 10,000, or both, must maintain at all times a risk-adjusted capital-to-total assets ratio of at least 8%.

2. 'Risk-adjusted capital' has the same meaning as in CREDS 5.4.1 R and CREDS 5.4.2 R (Risk-adjusted capital requirements for version 2 credit unions).
5.4 Version 2 credit unions

(1) A version 2 credit union must maintain at all times a risk-adjusted capital-to-total assets ratio of at least 8%.

(2) Risk-adjusted capital is calculated as follows: Capital + (provisions - balance of the net liability of borrowers where their loans are 12 months or more in arrears - 35% of the net liability of borrowers where their loans are 3 to 12 months in arrears).

In calculating risk-adjusted capital:

(1) the maximum net figure for provisions (after deduction of the stipulated amounts for loans in arrears) that can be included is 1% of total assets;

(2) 'provisions' includes specific provisions and general provisions; and

(3) mortgage loans and provisions in respect of mortgage loans must not be included in calculating the loan balances to be deducted from, and the provisions to be added to, the amount of capital.

Minimum initial capital

A credit union must have adequate initial capital taking into account the nature, scale and complexity of its business and expected early expenses.

(1) A version 2 credit union should have initial capital of at least £50,000.

(2) Contravention of (1) may be relied on as tending to establish contravention of CREDS 5.4.3 R.

For the meaning of 'initial capital' see CREDS 5.2.1 R (5).

It should be noted that the requirement in CREDS 5.4.3 R does not affect a credit union’s obligations to meet the other capital requirements that apply to it. The ability of a credit union to comply on a continuing basis with the other capital requirements that apply to it will be a central factor for consideration in any application for authorisation.
Chapter 6

Liquidity
6.1 Application and purpose

Application

This chapter applies to all credit unions.

Purpose

This chapter amplifies Principle 4, under which a credit union must maintain adequate financial resources, and the threshold condition for permission that a credit union’s resources must be adequate in relation to the regulated activities that it carries on.

6.1.2 R

A central feature of credit union business is maturity transformation, in other words taking short-term deposits (in the form of share accounts) from members and making comparatively long-term loans. It is important, in order to maintain confidence and protect members, that a credit union has adequate liquid assets (liquidity) to enable it to fulfil members’ withdrawal requests within expected timeframes.
6.2 General requirements

Liquid assets

6.2.1 \textit{PRA} A \textit{credit union} must hold liquid assets of an amount and composition that is prudent and appropriate to the scale and nature of its business, having regard to material risks, including the risk of a sudden adverse cash flow, with a view to enabling it to meet its objectives.

6.2.2 \textit{PRA} The liquid assets held by a \textit{credit union} should be sufficient to meet its day-to-day business needs and to provide an appropriate cushion in the event of pressure arising from unexpected events.

6.2.3 \textit{PRA} The responsibility for ensuring that a \textit{credit union} can meet its obligations as they fall due rests with the \textit{credit union’s} management.

Liquid management policy statement

6.2.4 \textit{PRA} A \textit{credit union} must establish, maintain and implement an up-to-date liquidity management policy statement approved by the committee of management and designed to ensure its compliance with \textbullet\textit{CREDS 6.2.1 R}.

[Note: a transitional provision applies to this rule: see \textbullet\textit{CREDS TP 1.6}.]

6.2.5 \textit{PRA} A version 2 \textit{credit union} must send to the \textit{PRA} a copy of its liquidity management policy statement as soon as reasonably practicable after it has been approved by the committee of management.

6.2.6 \textit{PRA} A \textit{credit union} should be able to satisfy the \textit{PRA} on a continuing basis that it has a prudent liquidity management policy and adequate management systems in place to ensure that the policy is adhered to.

6.2.7 \textit{PRA} The liquidity management policy statement of a \textit{credit union} should set out the \textit{credit union’s} objectives for liquidity, the limits within which liquidity should be maintained, and the types of liquid assets which the \textit{credit union} should hold.

6.2.8 \textit{PRA} A \textit{credit union’s} committee of management should review and approve its liquidity management policy statement at least once a year, and more frequently if necessary, especially in the light of significant changes in business.
Where a version 2 credit union has borrowed wholesale funds, the maturity of such funds and the risk of their not being able to be refinanced should be taken into account in the formulation of the credit union’s liquidity management policy statement.

When a credit union provides ancillary services such as issuing and administering means of payment and money transmission, it should take into account the potentially greater volatility of its funds when deciding what amount and composition of liquid assets is necessary to comply with CREDS 6.2.1 R.
6.3 Minimum liquidity requirements

6.3.1 A credit union must at all times hold liquid assets of a value equal to at least 5% of its total relevant liabilities.

6.3.2 A credit union must further hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the credit union's liquid assets below 10% of its total relevant liabilities.

[Note: a transitional provision applies to this rule: see CREDS TP 1.2.]

6.3.3 The liquidity requirements set out in CREDS 6.3.1 R and CREDS 6.3.2 R are minimum requirements and are subject to the overarching requirement of CREDS 6.2.1 R.

6.3.4 (1) For the purposes of CREDS 6.3.1 R and CREDS 6.3.2 R, only those assets will count as liquid which can be realised for cash at short notice, and within at most eight days.

(2) Amounts loaned by one credit union to another must not be counted as liquid by the lender.

6.3.5 For the purposes of calculating the ratio of a credit union's liquid assets to its total relevant liabilities (in CREDS 6.3.1 R and CREDS 6.3.2 R), assets must be valued at the amount for which they could be realised within eight days.

6.3.6 (1) For the purposes of calculating the ratio of a credit union's liquid assets to its total relevant liabilities (in CREDS 6.3.1 R and CREDS 6.3.2 R), the securities referred to in CREDS 3.2.1 R to CREDS 3.2.3 R must be valued on the basis that they could be realised at market value minus the following discounts (whether or not this is the case in fact):

(a) maturity less than 1 year - zero;

(b) maturity 1 to 5 years - 5%.
(2) Compliance with CREDS 6.3.6E (1) may be relied on as tending to establish compliance with CREDS 6.3.5 R (the 8-day realisation-value rule).

6.3.7 PRA

An asset maturing on a non-business day should be regarded as maturing on the succeeding business day.

6.3.8 PRA

For the purposes of clarity, funds serving liquidity purposes may be invested in the manner set out in CREDS 3.2.1 R provided that the resulting assets satisfy the relevant requirements of this chapter.

6.3.9 PRA

Where a credit union buys or holds property as premises from which to conduct its business, the credit union should not count those premises as liquid assets for the purposes of CREDS 6.3.4 R.
Chapter 7

Lending to members
7.1 Application, purpose and interpretation

Application

This chapter applies to all credit unions.

Purpose

(1) This chapter seeks to protect the interests of credit unions' members in respect of loans to members under section 11 of the Credit Unions Act 1979 or article 28 of the Credit Unions (Northern Ireland) Order 1985. Principle 4 requires credit unions to maintain adequate financial resources and CREDS 5 sets out the PRA's detailed capital adequacy requirements in respect of credit unions.

(2) This chapter is not relevant to loans between credit unions, except as indicated in CREDS 3.2.6 G (4).

Interpretation

The rules and guidance in this chapter are in addition to the provisions of (in relation to Great Britain credit unions) section 11 of the Credit Unions Act 1979 and (in relation to Northern Ireland credit unions) article 28 of the Credit Unions (Northern Ireland) Order 1985 in relation to loans made by credit unions. Under these provisions

(1) a Great Britain credit union may make a loan only to:

   (a) a member of the credit union who is an individual; and

   (b) a corporate member of the credit union, if the credit union's rules provide that it may make loans to corporate members and making the loan would not result in the aggregate of the outstanding balances on loans made by the credit union to corporate members exceeding the percentage of the aggregate of the outstanding balances on all loans made by the credit union specified by or under section 11 of the Credit Unions Act 1979;

   (c) other credit unions;

(1A) a Northern Ireland credit union may make a loan only to:

   (a) a member of the credit union who is an individual; and

   (b) other credit unions;
(2) a credit union may not make a loan to a member of the credit union holding only deferred shares.

"Corporate member" has the same meaning as in section 5A of the Credit Unions Act 1979.
7.2 General requirements concerning lending policy

7.2.1 [deleted]

7.2.1A R A credit union must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in CREDS 7.3.

7.2.1B R A credit union must establish, maintain and implement an up-to-date lending policy statement approved by the committee of management that is prudent and appropriate to the scale and nature of its business, having regard to the limits outlined in CREDS 7.4.

[Note: a transitional provision applies to CREDS 7.2.1A R and CREDS 7.2.1B R: see CREDS TP 1.6.]

7.2.2 R A version 2 credit union must provide the PRA with a copy of its lending policy statement as soon as reasonably practicable after it has been approved by the committee of management.

7.2.3 R A principal purpose of credit unions’ business is the accumulation of members’ savings to provide a fund out of which loans are provided for the benefit of the members. Credit unions may often in practice have less scope to minimise credit risk through the exercise of discretion than some other lenders. It is therefore important that a credit union has a carefully considered and effective lending policy statement.

7.2.4 R CREDS 2.2.6 R requires a credit union to maintain a manual of its policies and procedures. This should include the policy and procedure for making loans.

7.2.5 R The credit union’s committee of management should review and approve its lending policy at least once a year, and more frequently if necessary (for example if there is an escalating arrears problem), especially in the light of significant changes in business.

7.2.6 R The lending policy should consider the conditions for and amounts of loans to members, individual mandates, and the handling of loan applications.
(1) A credit union must not make a loan to:

(a) one of its officers or approved persons on terms more favourable than those available to other members of the credit union unless:

(i) that person is a paid employee (other than a director) of the credit union; and

(ii) the registered rules of the credit union provide explicitly for the making of loans to paid employees on such terms;

(b) (in the case of a Great Britain credit union) a relative of, or any person otherwise connected with, an officer, approved person or paid employee of the credit union on terms more favourable than those available to other members of the credit union;

(c) (in the case of a Northern Ireland credit union) a member of the family of, or any person otherwise connected with, an officer, approved person or paid employee of the credit union on terms more favourable than those available to other members of the credit union.

(2) "Relative" has the same meaning as in section 31 of the Credit Unions Act 1979.

(3) "Member of the family" has the same meaning as in article 2 of the Credit Unions (Northern Ireland) Order 1985.

(1) To prevent conflicts of interest, a credit union should have clear arrangements for dealing with loans to the persons specified in CREDS 7.2.7 R.

(2) In relation to staff, the prohibition in CREDS 7.2.7 R applies only to those who are officers or approved persons.

(3) "Connected" in CREDS 7.2.7 R includes any close business or personal relationship.

A credit union should have a documented arrears management policy, setting out the procedures and process for dealing with borrowers who fall into arrears. This should be reviewed regularly and promptly in the light of experience.

A credit union should have a clear, robust and effective approach to handling arrears and be able to satisfy the appropriate regulator on a continuing basis that it has adequate management and control systems in place to monitor arrears.

A credit union should ensure that loan assets are valued correctly in their accounts. A provisioning policy relating to problem loans and arrears cases should be clearly defined and documented covering the circumstances in which provisions are to be made.
(1) A credit union may make a loan to a member for a business purpose. However, this does not mean that a credit union may make a loan to a member who merely intends to transmit that loan to another body that will actually carry out the purpose.

(2) A credit union should not make loans to members who are acting together to achieve an aggregate loan that exceeds the limits in CREDS 7.3.
7.3 Lending limits

7.3.1 Subject to CREDS 7.3.8 R, a version 1 credit union must not lend for a period of more than five years where unsecured and ten years where secured.

[Note: a transitional provision applies to this rule: see §.]

7.3.2 The outstanding balance of a loan by a version 1 credit union to a member must not at any time be more than £15,000 in excess of the attached shares held by that member, but this rule is subject to the additional requirement in CREDS 5.3.10 R (1).

7.3.3 The effect of CREDS 5.3.10 R (1) is to prevent a version 1 credit union from lending more than £7,500 in excess of the attached shares held by that member unless it has a capital-to-total assets ratio of at least 5%.

7.3.4 Subject to CREDS 7.3.8 R, a version 2 credit union must not lend for a period of more than ten years where unsecured and 25 years where secured.

[Note: a transitional provision applies to this rule: see §.]

7.3.5 A credit union should not attempt to evade the limits in CREDS 7.3.1 R and CREDS 7.3.4 R by making loans in the expectation that they will not be fully repaid by the end of the period, but will be automatically extended or rescheduled.

7.3.6 The outstanding balance of a loan by a version 2 credit union to a member must not at any time be more than:

1. £15,000 in excess of the attached shares held by that member; or
2. an amount equivalent to 1.5% of total non-deferred shares in the credit union in excess of the attached shares held by that member; whichever is the greater.

The lending limit requirements set out above are maxima. A credit union should have adequate systems for recording and controlling all potential exposures. The capital requirements for version 1 credit unions and version 2 credit unions in respect of lending are set out in CREDS 5.3 and CREDS 5.4, including the PRA’s requirements in respect of calculating risk-adjusted capital.
A credit union with permission for entering into a regulated mortgage contract must not enter into such a contract for a term of more than 25 years.
7.4 Large exposures

For the purposes of this section, a large exposure is defined as an individual net liability to the credit union which meets both of the following criteria:

1. it is at least £7,500;
2. it is at least 10% of the value of the credit union’s total capital.

An individual large exposure must not exceed 25% of the credit union’s capital. In no circumstances may the aggregate total of all large exposures exceed 500% of the credit union’s capital.

[Note: a transitional provision applies to this rule: see §.]

A credit union must not permit the aggregate total of all large exposures to exceed 300% of capital unless the credit union notifies the PRA in advance.

For the purposes of large exposures the maximum net liability of a credit union with assets of £500,000 and 8% capital would be £10,000, subject to § CREDS 7.4.2 R and § CREDS 7.3.6 R.

For a credit union with assets of £1 million and 10% capital the maximum net liability would be £25,000.

Excessive exposure (large loans to an individual borrower and in aggregate) by a credit union can create a concentration of risk on the balance sheet and increase a credit union’s vulnerability to bad debt. This can lead to a strain on capital and solvency. While this risk cannot be eliminated, it can be contained by limits and controlling the extent to which credit unions commit themselves to large exposures. Therefore the large exposure limits set the maximum sum that may be loaned to any one member as a percentage of reserves to prevent concentration. All credit unions should set and document their own large exposure policy limits to avoid concentration of risk.

It is the committee of management’s responsibility to monitor large exposures. The large exposures limits policy should be reviewed on an annual basis (or more frequently where required).
7.5 Provisioning

A credit union must make adequate provision for bad and doubtful debt.

A credit union must make specific provision in its accounts for bad and doubtful debts of at least the amounts set out below:

1. 35% of the net liability to the credit union of borrowers where the amount is more than three months in arrears; and
2. 100% of the net liability to the credit union of borrowers where the amount is more than 12 months in arrears.

In addition to the requirements of CREDS 7.5.2 R, a credit union should consider making the following specific provisions in its accounts for bad and doubtful debts:

1. 60% of the net liability to the credit union of borrowers where the amount is more than six months in arrears; and
2. 80% of the net liability to the credit union of borrowers where the amount is more than nine months in arrears.

A credit union should maintain a general provision for bad and doubtful debts of at least 2% of the net liability to the credit union of borrowers not covered by the specific provisions in CREDS 7.5.2 R.

Contravention of (1) may be relied on as tending to establish contravention of CREDS 7.5.1 R.

In order to comply with the requirements of CREDS 7.5.1 R to CREDS 7.5.4 E, a credit union should review its provisioning requirements frequently. The PRA recommends that this is done at least quarterly.

A credit union should make it its business to know its customers and, in conjunction with its auditor, make a judgment on the degree of risk of non-payment attached to loans that are in arrears. Provisioning should reflect that judgment.
Where a delinquent loan is rescheduled and the arrears capitalised, the loan should be regarded as remaining impaired until there is sufficient evidence that it is performing on the rescheduled terms. In the meantime, any provision made in relation to that loan should be maintained, not released.

(1) CREDS 7.5.2 R requires a credit union to maintain minimum levels of specific provision. However, a credit union that only maintains the minimum levels does not necessarily comply with CREDS 7.5.1 R. This will depend on the assessment and judgment referred to in CREDS 7.5.6 G.

(2) (a) Failure to maintain a general provision of the level indicated in CREDS 7.5.4 E creates a presumption that the credit union is not complying with CREDS 7.5.1 R, though that presumption can be rebutted by the credit union: for example, it may be able to demonstrate that the occurrence of impaired loans that are either below the threshold for specific provision (that is, they are less than three months in arrears) or are unidentified at the time, is very low.

(b) If, on the other hand, a credit union does maintain the indicative level in CREDS 7.5.4 E, that does not necessarily mean that it complies with CREDS 7.5.1 R.

If a credit union needs to make higher provisions, beyond the levels in CREDS 7.5.2 R and CREDS 7.5.4 E, in order to meet CREDS 7.5.1 R, then it should do so.
Chapter 8

Supervision
8.1 Application and purpose

Application

This section applies to all credit unions.

Purpose

The purpose of this section is to provide additional rules and guidance relating to reporting requirements that are specific to credit unions. Credit unions also need to comply with the relevant provisions of SUP relating to reporting, including ■ SUP 16.3 and ■ SUP 16.12.
8.2 Reporting requirements

Quarterly return

8.2.1 FCA PRA

■ SUP 16.12.5 R states that a credit union must submit a quarterly return. The content, reporting frequency and due date in relation to that report are shown in ■ CREDS 8.2.2 G. The form can be found at ■ SUP 16 Annex 14(1)R.

[Note: a transitional provision applies to ■ SUP 16.12.5 R: see ■ CREDS TP 1.17.]

[Note: a transitional provision applies in respect of the form to be used at ■ SUP 16 Annex 14(1)R (see ■ CREDS TP 1.4).]

This table belongs to ■ CREDS 8.2.1 G

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Annual return

8.2.3 FCA PRA

■ SUP 16.12.5 R states that a credit union must submit an annual return. The content, reporting frequency and due date in relation to that report are shown in ■ CREDS 8.2.4 G. The form can be found at ■ SUP 16 Annex 14(2) R.

[Note: transitional provisions apply to the requirement in ■ SUP 16.12.5 R (see ) and in respect of the form to be used at ■ SUP 16 Annex 14(2)R (see )■ CREDS TP 1.4.]

[Note: a transitional provision applies to ■ SUP 16.12.5 R: see ■ CREDS TP 1.18.]

This table belongs to ■ CREDS 8.2.3 G

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<td>Extended financial data</td>
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<td>Six months after financial year end</td>
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</table>

The form may be updated from time to time. Credit unions should use the form in force at the end of the financial year on which they are reporting.
8.2.6 FCA PRA

Accounts and audit

(1) Every credit union must send to the PRA a copy of its audited accounts published in accordance with section 3A of the Friendly and Industrial and Provident Societies Act 1968 or provided in accordance with article 49 of the Credit Unions (Northern Ireland) Order 1985.

(2) The accounts must:

(a) be made up for the period beginning with the date of the credit union’s registration or with the date to which the credit union’s last annual accounts were made up, whichever is the later, and ending on the credit union’s most recent financial year end; and

(b) accompany the annual return submitted to the PRA under SUP 16.12.5 R (see CREDS 8.2.3 G), unless they have been submitted already.

Every credit union must supply free of charge, to every member or person interested in the funds of the credit union who applies for it, a copy of the latest audited accounts of the credit union sent to the PRA under CREDS 8.2.6 R.

8.2.7 FCA PRA

8.2.8 FCA PRA

Financial penalties for late submission of reports

(1) Financial penalties may be imposed for the late submission of:

(a) the quarterly and annual returns referred to in SUP 16.12.5 R; and

(b) the audited accounts referred to in CREDS 8.2.6 R.

(2) Details of the policy and procedures on financial penalties are given in DEPP.
The purpose of this section is to set out further guidance relating to the approved persons regime that is specific to credit unions. Credit unions should also read Chapter 10 of the Supervision manual (SUP) concerning approved persons.

### Introduction

The effect of section 59 of the Act and SUP 10 is that a credit union must apply to the appropriate regulator for the approval of one or more individuals to perform the functions which are known as controlled functions. Controlled functions fall within two groups:

1. **The significant influence functions** describe the roles performed by the governing body and senior managers of the firm who exert a significant influence over the regulated activities of the firm.

2. **The customer functions** describe the roles of individuals who deal with customers or with the property of customers. These customer functions do not extend to activities in relation to accepting deposits or general insurance and therefore will not be relevant to credit unions with permission for accepting deposits only.

### Controlled functions

The complete list of all controlled functions is located in SUP 10.4.5 R. Guidance on those controlled functions most likely to be relevant to credit unions is provided below.

**[SUP 10.6: the governing functions]**

1. **[SUP 10.6.4 R: the director function]**, This is the function of acting in the capacity of a director of a credit union.

2. **[SUP 10.6.8 R: the non-executive director function]**. It is unusual for a credit union to appoint non-executive directors as such. But this function would include membership of a credit union’s supervisory committee and any other committee which scrutinises the approach of executive management, the credit union’s performance, and its standards of conduct.

3. **[SUP 10.6.11 R: the chief executive function]**. Acting in the capacity of chief executive, whether or not using that title. This role includes anyone having the responsibility, alone or jointly with one or more others, under the immediate authority of the committee of management, for the conduct of the whole of the business.
8.3.5 ■ SUP 10.7: the required functions:

(1) [deleted]

(2) ■ SUP 10.7.13 R: the money laundering reporting function. This is the function of acting in the capacity of the money laundering reporting officer of a credit union.

8.3.6 ■ SUP 10.8: the systems and controls function. This is the function of acting as an employee with responsibility for reporting to the committee of management in relation to:

(1) the credit union's financial affairs; or

(2) setting and controlling its risk exposure; or

(3) adherence to internal systems and controls, procedures and policies.

Where an employee performs the systems and controls function the appropriate regulator would expect the credit union to ensure that the employee had sufficient expertise and authority to perform that function effectively, for example by occupying the role of a director or senior manager.

8.3.7 ■ SUP 10A.9: the significant management functions: This controlled function will only apply to the credit union if the function is not being performed by a member of the committee of management and the credit union has followed the guidance in ■ SUP 10A.9.4 G.
Chapter 9

Complaints reporting rules for credit unions
9.1 Application and purpose

Application

This chapter applies to all credit unions.

Purpose

This chapter sets out rules and guidance for credit unions on completing reports concerning complaints received from eligible complainants. It replaces DISP 1.10 (Complaints reporting rules) and DISP 1.10A (Complaints data publication rules), which do not apply to credit unions (DISP 1.1.5A R).

The other elements of DISP 1 (DISP 1.2 (Consumer awareness rules), DISP 1.3 (Complaints handling rules), DISP 1.4 to DISP 1.8 (Complaints resolution rules etc.) and DISP 1.9 (Complaints record rule)) apply to credit unions.

DISP 2 to DISP 4 (which cover jurisdiction and procedures of the Financial Ombudsman Service) and FEES 5 (which covers funding of the Financial Ombudsman Service) apply to credit unions.
9.2 Reporting

A credit union must provide the FCA, once a year, with a report in the format set out in CREDS 9 Annex 1 R (Credit Union complaints return) which contains (for the relevant reporting period) information about:

1. the total number of complaints received by the credit union;

2. the number of complaints closed by the credit union:
   (a) within eight weeks of receipt; and
   (b) more than eight weeks after receipt;

3. the total number of complaints:
   (a) upheld by the credit union in the reporting period;
   (b) outstanding at the start of the reporting period; and

4. the total amount of redress paid in respect of complaints during the reporting period.

[Note: a transitional provision applies to this rule: see CREDS TP 1.16.]

A credit union must not include in the report a complaint that has been forwarded in its entirety to another respondent under DISP 1.7 (the complaints forwarding rules).

Where a credit union has forwarded to another respondent only part of a complaint or where two respondents may be jointly responsible for a complaint, then the complaint should be reported by both firms.

CREDS 9.2.1 R does not apply to a complaint that is resolved by close of business on the business day following its receipt.

For the purposes of CREDS 9.2.4 R:

1. a complaint received on any day other than a business day, or after close of business on a business day, may be treated as received on the next business day; and
(2) a complaint is resolved where the complainant has indicated acceptance of a response from the credit union, with neither the response nor acceptance having to be in writing.

For the purpose of □ CREDS 9.2.1 R, and upon completing the return, the credit union should note that:

(1) where a complaint could fall into more than one category, the complaint should be recorded against the category that the credit union considers to form the main part of the complaint;

(2) where a complaint has been upheld under □ CREDS 9.2.1R (3)(a), a credit union should report any complaints to which it has given a final response which accepts the complaint and, where appropriate, offers redress, even if the redress offered is disputed by the complainant. Where a complaint is upheld in part, or where the credit union does not have enough information to make a decision yet chooses to make a goodwill payment to the complainant, the credit union should treat the complaint as upheld for reporting purposes. Where a credit union rejects a complaint, yet chooses to make an ex-gratia payment to the complainant, the complaint should be recorded as rejected;

(3) where a credit union reports on the amount of redress paid under □ CREDS 9.2.1R (4), redress should be interpreted to include any amount paid, or cost borne, by the credit union, where a cash value can be readily identified, and should include:

(a) amounts paid for distress and inconvenience;
(b) a free transfer out to another provider which transfer would normally be paid for;
(c) ex-gratia payments and goodwill gestures;
(d) interest on delayed settlements
(e) waiver of an excess on an insurance policy; and
(f) payments to put the consumer back into the position the consumer should have been in had the act or omission not occurred;

(4) where a credit union reports on the amount of redress paid under □ CREDS 9.2.1R (4), such redress should not, however, include repayments or refunds of premiums which had been taken in error (for example where a credit union had been taking, by direct debit, twice the actual premium amount due under a policy). The refund of the overcharge would not count as redress.

For the purposes of □ CREDS 9.2.1 R:

(1) the relevant reporting period is from 1 April to 31 March each year; and

(2) reports are to be submitted to the FCA within one month of the end of the relevant reporting period.
Financial penalties may be imposed for the late submission of the complaints report required by CREDS 9.2.1 R.

For the purposes of making reports under CREDS 9.2.1 R, a closed complaint is a complaint:

1. where the credit union has sent a final response; or
2. where the complainant has positively indicated acceptance of the credit union's earlier response; or
3. where the complainant has failed to revert to the credit union within eight weeks of the credit union's most recent letter.

A report under this section must be given or addressed, and delivered, in the way set out in SUP 16.3.6 R to SUP 16.3.16 G (General provisions on reporting), except that, instead of the credit union's usual supervisory contact, the report must be given to or addressed for the attention of the Central Reporting team at the FCA.

SUP 16.3.14 R applies to the credit unions' complaints returns.

For the purpose of inclusion in the public record maintained by the FCA, a credit union must provide the FCA, at the time of its authorisation, with details of a single contact within the credit union for complainants, and in its quarterly return must notify the FCA of any subsequent change.

The contact point in CREDS 9.2.1 R and CREDS 9.2.12 R can be by name or job title and may include, for example, a telephone number.
Credit union complaints return

This annex consists only of one or more forms.

Credit union complaints return
Chapter 10

Application of other parts of the Handbook to Credit unions
10.1 Application and purpose

**Application**

This chapter applies to all credit unions.

**Purpose**

This chapter is intended to draw credit unions’ attention to the application of other key parts of the Handbook to credit unions as set out in the table at CRED 10.1.3 G. That table refers only to the parts of the Handbook that apply with respect to Part 4A permission to accept deposits.

**Application of other parts of the Handbook and of Regulatory Guides to Credit Unions**

<table>
<thead>
<tr>
<th>Module</th>
<th>Relevance to Credit Unions</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Principles for Businesses (PRIN)</td>
<td>The Principles for Businesses (PRIN) set out, high-level requirements, some of which are imposed by the FCA and some by the PRA. They provide a general statement of regulatory requirements. The Principles apply to all credit unions. In applying the Principles to credit unions, the appropriate regulator will be mindful of proportionality. In practice, the implications are likely to vary according to the size of the credit union.</td>
</tr>
<tr>
<td>Senior Management Arrangements, Systems and Controls (SYSC)</td>
<td>SYSC 1 and SYSC 4 to 10 apply to all credit unions in respect of the carrying on of their regulated activities and unregulated activities in a prudential context. SYSC 18 applies to all credit unions without restriction.</td>
</tr>
<tr>
<td>Threshold Conditions (COND)</td>
<td>In order to become authorised under the Act all firms must meet the threshold conditions. The threshold conditions must be met on a continuing basis by credit unions. Failure to meet one of the conditions is sufficient grounds for the exercise by the appropriate regulator of its powers.</td>
</tr>
<tr>
<td>Statements of Principle and Code of Practice for Approved Persons (APER)</td>
<td>The purpose of the Statements of Principle contained in APER 2 is to provide guidance to approved persons in relation to the conduct expected of them in the performance of a controlled function. The Code of Practice for Approved Persons sets out descriptions of conduct which, in the opinion of the appropriate regulator, do not comply with a Statement of Principle and, in the case of Statement of Principle 3, conduct which tends to show compliance within that statement.</td>
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<tr>
<td>Module</td>
<td>Relevance to Credit Unions</td>
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<tr>
<td>The Fit and Proper test for Approved Persons (FIT)</td>
<td>The purpose of FIT is to set out and describe the criteria that the appropriate regulator will consider when assessing the fitness and propriety of a person in respect of whom an application is being made for approval to undertake a controlled function under the approved persons regime. The criteria are also relevant in assessing the continuing fitness and propriety of persons who have already been approved.</td>
</tr>
<tr>
<td>General Provisions (GEN)</td>
<td>GEN contains rules and guidance on general matters, including interpreting the Handbook, statutory status disclosure, the appropriate regulator’s logo and insurance against financial penalties.</td>
</tr>
<tr>
<td>Fees manual (FEES)</td>
<td>This manual sets out the fees applying to credit unions.</td>
</tr>
<tr>
<td>Conduct of Business sourcebook (COBS)</td>
<td>A credit union which acts as a CTF provider or provides a cash-deposit ISA will need to be aware of the relevant requirements in COBS. COBS 4.6 (Past, simulated past and future performance), COBS 4.7.1 R (Direct offer financial promotions), COBS 4.10 (Systems and controls and approving and communicating financial promotions), COBS 13 (Preparing product information) and COBS 14 (Providing product information to clients) apply with respect to accepting deposits as set out in those provisions, COBS 4.1 and BCOBS.</td>
</tr>
<tr>
<td>Banking: Conduct of Business sourcebook (BCOBS)</td>
<td>BCOBS sets out rules and guidance for credit unions on how they should conduct their business with their customers. In particular there are rules and guidance relating to communications with banking customers and financial promotions (BCOBS 2), distance communications (BCOBS 3), information to be communicated to banking customers (BCOBS 4), post sale requirements (BCOBS 5), and cancellation (BCOBS 6). BCOBS 5.1.13 R (Value dating) does not apply to credit unions. The rules in BCOBS 3.1 that relate to distance contracts for accepting deposits are likely to have limited application to a credit union. This is because the Distance Marketing Directive only applies where there is &quot;an organised distance sales or service-provision scheme run by the supplier&quot; (Article 2(a)). If, therefore, the credit union normally operates face to face and has not set up facilities to enable customers to deal with it at a distance, such as facilities for a customer to deal with it purely by post, telephone, fax or the Internet, the provisions will not be relevant.</td>
</tr>
<tr>
<td>Supervision manual (SUP)</td>
<td>The following provisions of SUP are relevant to credit unions: SUP 1A (The appropriate regulator’s approach to supervision), SUP 2 (Information gathering by the appropriate regulator on its own initiative), SUP 3.1 to SUP 3.8 (Auditors), SUP 5 (Skilled persons), SUP 6 (Applications to vary or cancel Part 4A permission), SUP 7 (Individual requirements), SUP 8 (Waiver and modification of rules), SUP 9 (Individual guidance), SUP 10A and SUP 10B (Approved persons), SUP 11 (Controllers and Close links), SUP 15 (Notifications to the appropriate regulator) and SUP 16 (Reporting Requirements).</td>
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</tbody>
</table>

Credit unions are reminded that they are subject to the requirements of the Act and SUP 11 on controllers and close links, and are bound to notify the appropriate regulator of changes. It may be unlikely, in practice, that credit unions will develop such relationships. It is possible, however, that a person may acquire control of a credit union within the meaning of the Act by reason of holding the prescribed proportion of deferred shares in the credit union.
### Module | Relevance to Credit Unions
---|---
**Decision, Procedure and Penalties manual (DEPP)** | In relation to SUP 16, credit unions are exempted from the requirement to submit annual reports of controllers and close links. DEPP is relevant to credit unions because it sets out:

(1) the FCA’s decision-making procedure for giving statutory notices. These are warning notices, decision notices and supervisory notices (DEPP 1.2 to DEPP 5); and

(2) the FCA’s policy with respect to the imposition and amount of penalties under the Act (see DEPP 6).

**Dispute Resolution: Complaints (DISP)** | DISP sets out rules and guidance in relation to treating complainants fairly and the Financial Ombudsman Service.

**Compensation (COMP)** | COMP sets out rules relating to the scheme for compensating consumers when authorised firms are unable, or likely to be unable, to satisfy claims against them.

**The Enforcement Guide (EG)** | The Enforcement Guide (EG) describes the FCA’s approach to exercising the main enforcement powers given to it by the Act and by regulation 12 of the Unfair Terms Regulations.

**Financial crime: a guide for firms (FC)** | FC provides guidance on steps that a firm can take to reduce the risk that it might be used to further financial crime.
Note: The following key definitions relevant to CREDS are extracted from the Glossary.

attached shares means any shares in the credit union (other than any deferred shares):

(a) (in relation to a Great Britain credit union) the withdrawal of which is not permitted by section 7 (5) of the Credit Unions Act 1979 or (in relation to a Northern Ireland credit union) the withdrawal of which is not permitted by article 23(4) of the Credit Unions (Northern Ireland) Order 1985; or

(b) (in relation to a Great Britain credit union) the withdrawal of which is not permitted by the terms of a loan made to a member; or

(c) the withdrawal of which is not permitted without seeking and obtaining the permission of the committee of management of the credit union.

In relation to a Great Britain credit union, paragraph (c) of this definition is relevant only where the credit union made a loan to the holder of the shares before the Legislative Reform (Industrial and Provident Societies and Credit Unions) Order 2011 came into force.

complaint any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, which:

(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and
(b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products, which comes under the jurisdiction of the Financial Ombudsman Service.

**CREDS**

the Credit Unions New sourcebook.

**deferred shares**

in relation to a Great Britain credit union, means any shares of a class defined as deferred shares by section 31A of the Credit Unions Act 1979.

**final response**

(in CREDS 9) a written response from a respondent which:

(a) accepts the complaint, and, where appropriate, offers redress or remedial action; or

(b) offers redress or remedial action without accepting the complaint; or

(c) rejects the complaint and gives reasons for doing so; and which informs the complainant that, if he remains dissatisfied with the firm’s response, he may now refer his complaint to the Financial Ombudsman Service and must do so within six months.

**net liability**

means the outstanding balance of any loan made to the borrower and any interest or charges on that loan that are due but unpaid, less any attached shares held by the borrower.

**total non-deferred shares**

means the total of members' share balances in a credit union shown in the most recent annual return to have been sent to the PRA under SUP 16.12.5 R (see CREDS 8.2.3 G), excluding any deferred shares in the credit union.

**total relevant liabilities**

means the sum of:

(a) unattached shares in the credit union, and deposits by persons too young to be members of the credit union; and

(b) liabilities (other than liabilities for shares) with an original or remaining maturity of less than three months (including overdrafts and instalments of loans).

**unattached shares**

means the total shares in the credit union other than any attached shares or deferred shares.
## CREDS TP 1
### Transitional Provision

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<td></td>
<td>Materials to which the transitional provision applies</td>
<td>Transitional Provision</td>
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<td>Transitional provisions: dates in force</td>
<td>Handbook provisions: coming into force</td>
</tr>
<tr>
<td>1</td>
<td>CREDS 5.3.1 R [FCA] [PRA]</td>
<td>A version 1 credit union need not comply with CREDS 5.3.1 R until midnight on 30 September 2014. CRED 8.3.1 R, as it was in force on 31 December 2011, will apply from the beginning of this transitional period until midnight on 30 September 2012. From midnight on that day until midnight on 30 September 2013, the version 1 credit union must at all times maintain a capital-to-total assets ratio of at least 1%. From midnight on 30 September 2013 until the end of this transitional period at midnight on 30 September 2014, the version 1 credit union must at all times maintain a capital-to-total assets ratio of at least 2%.</td>
<td>8 January 2012</td>
<td>From midnight on 30 September 2012 to midnight on 30 September 2014</td>
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<td>2</td>
<td>CREDS 6.3.2 R [FCA] [PRA]</td>
<td>A version 2 credit union need not comply with CREDS 6.3.2 R until midnight on 30 September 2014. From midnight on 30 September 2012 until midnight on 30 September 2013, the version 2 credit union must hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the credit union's liquid assets below 6% of its total relevant liabilities. From midnight on 30 September 2013, until the end of this transitional period at midnight on 30 September 2014, the version 2 credit union must hold enough liquid assets to ensure that on no two consecutive quarter ends is the level of the credit union's liquid assets below 8% of its total relevant liabilities.</td>
<td>8 January 2012</td>
<td>From midnight on 30 September 2012 to midnight on 30 September 2014</td>
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<td>3</td>
<td>SUP 16.12.7  R</td>
<td></td>
<td>The change in the applicable due date for the submission by a credit union of an annual return under SUP 16.12.5 R from 7 months to 6 months does not apply to an annual return in respect of the financial year ending on or before 31 July 2012.</td>
<td>31 July 2012</td>
<td>8 January 2012</td>
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<td></td>
<td>[FCA]</td>
<td>[PRA]</td>
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<td>4</td>
<td>SUP 16 Annex 14 R</td>
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<td>SUP 16 Annex 14 R, as it was in force on 31 December 2011, continues to apply to: (i) quarterly returns for credit unions in respect of the quarter ending on or before 31 December 2011, and (ii) annual returns in respect of the financial year ending on or before 7 January 2012</td>
<td>8 January 2012</td>
<td>8 January 2012</td>
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<tr>
<td></td>
<td>[FCA]</td>
<td>[PRA]</td>
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<tr>
<td>5</td>
<td>CREDS TPs 1, 2, 3 and 4</td>
<td>R</td>
<td>CREDS TPs 1, 2, 3 and 4 do not apply to Northern Ireland credit unions.</td>
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<td></td>
<td>[FCA]</td>
<td>[PRA]</td>
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<tr>
<td>6</td>
<td>CREDS 2.2.4 R, R</td>
<td></td>
<td>A Northern Ireland credit union need not comply with CREDS 2.2.4 R, CREDS 2.2.6 R, CREDS 2.2.8 R, CREDS 3.3.7 R, CREDS 6.2.4 R and CREDS 7.2.1 R.</td>
<td>From 31 March 2012 for as long as the relevant TPs remain in force</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
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<td></td>
<td>[FCA]</td>
<td>[PRA]</td>
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<td>7</td>
<td>CREDS 3.2.1 R  R</td>
<td></td>
<td>A Northern Ireland credit union need not comply with CREDS 3.2.1 R with respect to any types of investment invested in prior to credit unions day provided those types of investment were permitted under the Credit Unions (Northern Ireland) Order 1985 and the Credit Unions (Authorised Investments) Regulations (Northern Ireland) 1995 prior to credit unions day.</td>
<td>From 31 March 2012 until 30 March 2013</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
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<td>Transition-provisions: dates in force</td>
<td>Handbook provisions: coming into force</td>
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<tr>
<td>8</td>
<td>CREDS 3.2.2 R</td>
<td>A Northern Ireland credit union that is a version 1 credit union need not comply with CREDS 3.2.2 R with respect to any securities invested in, or loans made, in accordance with CREDS 3.2.1 R prior to credit unions day provided those securities or loans mature in accordance with the terms of the relevant agreement as at credit unions day. This transitional provision does not apply to any securities invested in, or loans made, in accordance with CREDS 3.2.1 R prior to credit unions day that satisfy the requirements in CREDS 3.2.2 R.</td>
<td>From 31 March 2012 until the maturity date of the securities invested in or loans made</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
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<tr>
<td>9</td>
<td>CREDS 3.2.2 R</td>
<td>A Northern Ireland credit union that is a version 1 credit union need not comply with CREDS 3.2.2 R with respect to any securities invested in, or loans made, in accordance with CREDS 3.2.1 R using surplus funds within one year from credit unions day and which in accordance with the terms of the relevant agreement have a maturity of up to three years.</td>
<td>From 31 March 2012 until 30 March 2013</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
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<tr>
<td>10</td>
<td>CREDS 3.2.3 R</td>
<td>A Northern Ireland credit union that is a version 2 credit union need not comply with CREDS 3.2.3 R with respect to any securities invested in, or loans made, in accordance with CREDS 3.2.1 R prior to credit unions day provided those securities or loans mature in accordance with the terms of the relevant agreement as at credit unions day. This transitional provision does not apply to any securities invested in, or loans made, in accordance with CREDS 3.2.1 R prior to credit unions day that comply with CREDS 3.2.3 R.</td>
<td>From 31 March 2012 until the maturity date of the securities invested in or loans made</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
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<tr>
<td>11</td>
<td>CREDS 4.4.1 R</td>
<td>A Northern Ireland credit union need not comply with CREDS 4.4.1 R.</td>
<td>From 31 March 2012 until 30 March 2013</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
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<td>Transitional provisions: dates in force</td>
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<tr>
<td>12</td>
<td>CREDS 5.3.3 R and [PRA] CREDS 5.3.5 R</td>
<td>Where the requirements of CREDS 7.5.1 R, CREDS 7.5.2 R and CREDS 7.5.4 E would result in a Northern Ireland credit union having to make higher provision than would have been required prior to credit unions day, that Northern Ireland credit union need not comply with CREDS 5.3.3 R and CREDS 5.3.5 R to the extent that that Northern Ireland credit union may transfer out of its general reserve the amount of provision that is additional to the amount that would have been required prior to credit unions day. If a Northern Ireland credit union takes advantage of this transitional provision it must advise the PRA of the amount transferred by the due date of submission for submission of its next annual return. This provision applies even where the amount standing to the Northern Ireland credit union's general reserve is, or as a result of the transfer would be, less than 10% of total assets.</td>
<td>From 31 March 2012 until the due date for submission by that Northern Ireland credit union of its next annual return.</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>CREDS 7.3.1 R and [FCA] [PRA]</td>
<td>A Northern Ireland credit union that is a version 1 credit union need not comply with CREDS 7.3.1 R with respect to any loan outstanding on credit unions day. That loan must be repaid in accordance with the terms as at credit unions day of the relevant loan agreement. This transitional provision does not apply to any loan outstanding on credit unions day that satisfies the requirements in CREDS 7.3.1 R.</td>
<td>From 31 March 2012 until the day the loan is repaid</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
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</tr>
<tr>
<td>14</td>
<td>CREDS 7.3.4 R and [FCA] [PRA]</td>
<td>A Northern Ireland credit union that is a version 2 credit union need not comply with CREDS 7.3.4 R with respect to any loan outstanding on credit unions day. That loan must be repaid in accordance with the terms as at credit unions day of the relevant loan agreement. This transitional provision does not</td>
<td>From 31 March 2012 until the day the loan is repaid</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
</tr>
<tr>
<td>---</td>
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<td>-----</td>
<td>-----</td>
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<td>-----</td>
</tr>
<tr>
<td></td>
<td>Materials to which the transitional provision applies</td>
<td>Transitional Provision</td>
<td></td>
<td>Handbook provisions: dates in force</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>CREDS 7.4.2 R</td>
<td>A Northern Ireland credit union need not comply with CREDS 7.4.2 R with respect to any individual large exposure in existence on credit unions day or the aggregate total of all large exposures in existence on credit unions day. Those large exposures must be repaid in accordance with the terms of the agreement relating to the relevant large exposure as at credit unions day. This transitional provision does not apply to any individual large exposure in existence on credit unions day or the aggregate total of all large exposures in existence on credit unions day that comply with CREDS 7.4.2 R.</td>
<td>From 31 March 2012 until 30 March 2014 or the day the individual large exposure or the aggregate total of all large exposures satisfies the requirements in CREDS 7.4.2 R if earlier</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>CREDS 9.2.1 R and CREDS 9.2.7 R</td>
<td>A Northern Ireland credit union need not comply with the requirement to submit a return under CREDS 9.2.1 R until 30 April 2013, and the relevant reporting period under CREDS 9.2.7 R for this return is from 1 October 2012 to 31 March 2013.</td>
<td>From 31 March 2012 until 30 April 2013</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>SUP 16.12.5 R</td>
<td>A Northern Ireland credit union need not comply with the requirement to submit quarterly returns under SUP 16.12.5 R until 31 January 2013 for the period from 1 October to 31 December 2012.</td>
<td>From 31 March 2012 until 31 January 2013</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>SUP 16.12.5 R</td>
<td>A Northern Ireland credit union need not comply with the requirement to submit an annual return under SUP 16.12.5 R for the year end 30 September 2011.</td>
<td>From 31 March 2012 indefinitely.</td>
<td>For Northern Ireland credit unions 31 March 2012</td>
<td></td>
</tr>
</tbody>
</table>
There are no requirements relating to record keeping in CREDS.
Credit Unions New sourcebook

Schedule 2
Notification requirements

Sch 2.1 G

The aim of the guidance in the following table is to give the reader a quick overall view of the relevant notification requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 2.2 G

<table>
<thead>
<tr>
<th>Reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>CREDS 2.2.4 R</td>
<td>Business plan</td>
<td>Copy of business plan</td>
<td>Upon request</td>
<td>As soon as reasonably practical</td>
</tr>
<tr>
<td>CREDS 2.2.52 G</td>
<td>Copy of business plan</td>
<td>Version 2 credit unions should submit after adoption and / or amendment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CREDS 2.2.6 R</td>
<td>Policies and procedures manual</td>
<td>Copy of policies and procedures manual. Wide range of detail as specified as guidance in CREDS 2</td>
<td>Upon request</td>
<td>As soon as reasonably practical</td>
</tr>
<tr>
<td>CREDS 2.2.60 G</td>
<td>Policies and procedures manual</td>
<td>Version 2 credit unions should submit after adoption and / or amendment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CREDS 3.3.10 R</td>
<td>Financial risk Management Policy</td>
<td>Statement of financial risk management policy</td>
<td>Version 2 credit unions must submit after adoption and / or amendment</td>
<td>As soon as reasonably practical</td>
</tr>
<tr>
<td>CREDS 5.2.3 G</td>
<td>General notification</td>
<td>Any proposed repayment of subordinated debt</td>
<td>As soon as credit union aware</td>
<td>At least one month in advance of proposed repayment</td>
</tr>
<tr>
<td>CREDS 6.2.5 R</td>
<td>Liquidity</td>
<td>Liquidity Management Policy Statement</td>
<td>Version 2 credit unions must submit after adoption and/or amendment</td>
<td>As soon as reasonably practical</td>
</tr>
<tr>
<td>CREDS 7.2.1 R to CREDS 7.2.2 R</td>
<td>Lending policy</td>
<td>Current lending policy statement</td>
<td>Version 2 credit unions must submit</td>
<td>As soon as reasonably practical</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Matter to be notified</td>
<td>Contents of notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------</td>
<td>--------------------------</td>
<td>---------------</td>
<td>--------------</td>
</tr>
<tr>
<td>CREDS 7.4.3 R</td>
<td>Large exposures</td>
<td>The aggregate total of all large exposures will exceed 300% of capital.</td>
<td>Prior to the aggregate total of all large exposures exceeding 300% of capital.</td>
<td>As soon as reasonably practicable.</td>
</tr>
<tr>
<td>CREDS 8.2.1 G</td>
<td>Quarterly return</td>
<td>Key financial data</td>
<td>Quarter end</td>
<td>1 month after quarter end</td>
</tr>
<tr>
<td>CREDS 8.2.3 G</td>
<td>Annual return</td>
<td>Extended financial data</td>
<td>Financial year end</td>
<td>6 months after financial year end</td>
</tr>
<tr>
<td>CREDS 8.2.6 R</td>
<td>Audited accounts</td>
<td>Revenue account and balance sheet</td>
<td>Financial year end</td>
<td>Until submission of annual return</td>
</tr>
<tr>
<td>CREDS 9.2.1 R</td>
<td>Complaints report</td>
<td>Analysis of complaints</td>
<td>31 March each year</td>
<td>1 month after period end</td>
</tr>
</tbody>
</table>
Credit Unions New sourcebook

Schedule 3
Fees and other required payments

Sch 3.1 G
There are no requirements for fees or other payments in CREDS.

The table below summarises the fee requirements for credit unions detailed elsewhere.

Sch 3.2 G

<table>
<thead>
<tr>
<th>Description of fee</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Appropriate regulator rules relating to authorisation fees</td>
<td>FEES 3</td>
</tr>
<tr>
<td>Schedule of authorisation fees payable</td>
<td>FEES 3 Annex 1 R</td>
</tr>
<tr>
<td>Appropriate regulator fees rules relating to the periodic fee</td>
<td>FEES 4</td>
</tr>
<tr>
<td>FOS funding rules</td>
<td>FEES 5</td>
</tr>
<tr>
<td>FSCS funding rules</td>
<td>FEES 6</td>
</tr>
</tbody>
</table>
Credit Unions New sourcebook

Schedule 4
Powers exercised

Sch 4.1 G
The following powers and related provisions in or under the Act have been exercised by the FSA to make the rules in CREDS:

- Section 138 (General rule-making power)
- Section 149 (Evidential provisions)
- Section 156 (General supplementary powers)
- Section 213 (The compensation scheme)
- Section 214 (General)
- Section 226 (Compulsory jurisdiction)
- Paragraph 13 (Compulsory jurisdiction) of Schedule 17 (The Ombudsman Scheme)

Sch 4.2 G
The following powers in or under the Act have been exercised by the FSA to give the guidance in CREDS:

- Section 157(1) (Guidance).
Credit Unions New sourcebook

Schedule 5
Rights of actions for damages

Sch 5.1 G

The table below sets out the rules in CREDS contravention of which by an authorised person may be actionable under Section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

If a “Yes” appears in the column headed "For private person?", the rule may be actionable by a "private person" under section 138D (or, in certain circumstances, his fiduciary or representative). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under Section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

The column headed "For other person?" indicates whether the rule is actionable by a person other than a private person (or his fiduciary or representative). If so, an indication of the type of person by whom the rule is actionable is given.

Sch 5.2 G

<table>
<thead>
<tr>
<th>Chapter / Appendix</th>
<th>Section / Appendix</th>
<th>Paragraph</th>
<th>For private person?</th>
<th>Removed?</th>
<th>For other person?</th>
</tr>
</thead>
<tbody>
<tr>
<td>All rules in CREDS with the status letter 'E'.</td>
<td></td>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>All rules in CREDS that require a credit union to have or maintain financial resources.</td>
<td></td>
<td></td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>All other rules in CREDS.</td>
<td></td>
<td></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
Credit Unions New sourcebook

Schedule 6
Rules that can be waived

Sch 6.1 G

The rules made in CREDS can be waived by the appropriate regulator under sections 138A and 138B (Modification or waiver of rules) of the Act.

CREDS includes guidance on rules made in other parts of the Handbook. Reference should be made to those parts of the Handbook concerning waiver of those rules.
Professional Firms
Professional Firms

PROF 1 Professional firms
  1.1 Application and Purpose

PROF 2 Status of exempt professional firm
  2.1 Designated professional bodies and exempt regulated activities
  2 Annex 1 Status of exempt professional firm G
  2 Annex 2 Status of exempt professional firm G

PROF 3 The FSA's duties and powers
  3.1 The FCA's duty to keep itself informed
  3.2 The FCA's power to make a direction
  3 Annex 1 The FCA's duties and powers
  3 Annex 2 The FCA's duties and powers

PROF 4 Disclosure
  4.1 Disclosure rules

PROF 5 Non-mainstream regulated activities
  5.1 Application and purpose
  5.2 Nature of non-mainstream regulated activities
  5.3 Reference to other sourcebooks and manuals
  5.4 Application of the Distance Marketing Regulations

PROF 6 Fees
  6.1 [deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
  6.2 [deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
  6.3 [deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
  6 Annex 1 [deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]
  6 Annex 2 [deleted]
### PROF 7

**Insurance mediation activity**

- **7.1** Register of persons carrying on insurance mediation activity
- **7.2** Passorting under the Insurance Mediation Directive

### Transitional Provisions and Schedules

<table>
<thead>
<tr>
<th>TP 1</th>
<th>Transitional provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sch 1</td>
<td>Record keeping requirements</td>
</tr>
<tr>
<td>Sch 2</td>
<td>Notification requirements</td>
</tr>
<tr>
<td>Sch 3</td>
<td>Fees and other required payments</td>
</tr>
<tr>
<td>Sch 4</td>
<td>Powers exercised</td>
</tr>
<tr>
<td>Sch 5</td>
<td>Rights of action for damages</td>
</tr>
<tr>
<td>Sch 6</td>
<td>Rules that can be waived</td>
</tr>
</tbody>
</table>
Chapter 1

Professional firms
1.1 Application and Purpose

Application

This sourcebook applies as follows:

(1) PROF 1 to PROF 4 apply to exempt professional firms;

(2) PROF 5 applies to authorised professional firms; and

(3) [deleted]

(4) PROF 7 applies to every designated professional body and every exempt professional firm that is carrying on, or proposing to carry on, insurance mediation activity.

1.1.1A

This sourcebook does not apply to an incoming ECA provider acting as such.

Purpose

Under Part XX of the Act (Provision of Financial Services by Members of the Professions) certain individuals, partnerships or corporate entities, known as exempt professional firms, can carry on particular regulated activities (which the Act terms exempt regulated activities) under supervision and regulation by designated professional bodies.

This sourcebook outlines:

(1) the arrangements for designation of professional bodies;

(2) the conditions for activities to be treated as exempt regulated activities (see PROF 2.1.3 G);

(3) the FCA’s duty to keep itself informed about how designated professional bodies supervise and regulate the exempt regulated activities of exempt professional firms and how exempt professional firms carry on exempt regulated activities;
(4) the FCA’s power under section 328 of the Act (Directions in relation to the general prohibition) to make a direction to deny the exemption to different classes of person or to different descriptions of regulated activity;

(5) the implications for an authorised professional firm that carries on an non-mainstream regulated activities; and

(6) the arrangements made by the FCA for complying with its obligations under the Insurance Mediation Directive in relation to:
   (a) maintaining a record of unauthorised persons, including exempt professional firms, that carry on, or are proposing to carry on, insurance mediation activity; and
   (b) exempt professional firms that wish to passport under the Insurance Mediation Directive.

This sourcebook also contains disclosure rules made by the FCA under the power conferred by section 332(1) of the Act (Rules in relation to persons to whom the general prohibition does not apply). These rules apply to exempt professional firms for the purpose of ensuring that their clients are made aware that exempt professional firms are not authorised persons.

The rules and guidance in this sourcebook are intended to:

(1) assist the protection of clients of exempt professional firms by ensuring that the FCA has information which allows it to keep under review the exercise of the direction power under section 328 of the Act (see PROF 1.1.4 G (4));

(2) secure an appropriate degree of protection for consumers by ensuring that the clients of an exempt professional firm are made aware that the firm is not an authorised person;

(3) enable the FCA to use its resources in an efficient and effective way in the collection of information relevant to its duty to keep itself informed under 325 of the Act (FCA’s general duty); and

(4) explain the background to and the arrangements made by the FCA for:
   (a) the registration of unauthorised persons, including exempt professional firms, that carry on, or are proposing to carry on, insurance mediation activity; and
   (b) authorised professional firms and exempt professional firms that wish to exercise their EEA right under the Insurance Mediation Directive to establish a branch or provide cross border services in another EEA State.

Professional firms should refer to PERG 8 (Financial promotion and related activities) for general guidance on financial promotion and to PERG 8.15 (Financial promotions by members of the professions (articles 55 and 55A)) for guidance on the exemptions which are specifically intended for professional firms.
Chapter 2

Status of exempt professional firm
2.1 Designated professional bodies and exempt regulated activities

Designated professional bodies

2.1.1 The Treasury designates professional bodies. Section 326 of the Act (Designation of professional bodies) sets out the conditions a body must satisfy before it can be designated.

2.1.2 The professional bodies that have been designated by the Treasury are listed in PROF 2 Annex 1 G.

Exempt regulated activities

2.1.3 Section 327 of the Act (Exemption from the general prohibition) sets out the conditions which must be met for a person to be treated as an exempt professional firm, and for the person's regulated activities to be treated as exempt regulated activities. If the exemption in section 327 does not apply to a person and the person carries on a regulated activity, the person may contravene the general prohibition and be committing a criminal offence. The FCA’s approach to the use of its powers in respect of alleged contraventions of the general prohibition is explained in EG 12.

2.1.4 If the FCA has made a direction under section 328 of the Act (Directions in relation to the general prohibition) (see PROF 3.2) in relation to classes of person (or regulated activity), then a person within the class (or carrying on the regulated activity) specified will not be an exempt professional firm. In addition, section 329 of the Act (Orders in relation to the general prohibition) gives the FCA power to make an order disapplying the Part XX exemption from a person named in the Order. The FCA’s general approach to the use of this power is explained in EG 16.

2.1.5 Section 327(2) provides that an exempt professional firm must be a member of a profession or be controlled or managed by one or more members. The FCA considers that "managed" here should be read with its natural meaning. However, it may not be sufficient for a compliance manager to fulfil the role of manager, unless that individual is also able to exercise significant management functions involving overall oversight of the operation/business of the relevant person.

2.1.6 The effect of section 327(7) of the Act is that an exempt professional firm can carry on regulated activities in that capacity or as an exempt person but not otherwise. Therefore, an exempt professional firm cannot be an authorised person.
The Act does not, however, prevent an exempt professional firm from carrying on, in addition to exempt regulated activities, any regulated activities in relation to which it is an exempt person. For example, it is possible for an exempt professional firm to carry on regulated activities as an appointed representative.

Section 327 also sets out the conditions which determine the particular regulated activities an exempt professional firm may carry on.

Section 327(6) of the Act gives the Treasury power to make an order specifying activities, or activities relating to specified investments, that a person cannot carry on as an exempt professional firm. The relevant orders are listed in PROF 2 Annex 2 G.

Section 327(3) deals with the treatment by a firm of a pecuniary reward or other advantage received from anyone other than the firm’s client. For a regulated activity to be treated as an exempt regulated activity, the firm must account to its client for any such receipt. The FCA considers this to mean that an exempt professional firm must hold to the order of its client any such reward or other advantage that it receives.

Section 327(4) states that the manner of the provision of any service in the course of carrying on regulated activities must be incidental to the provision by the exempt professional firm of professional services. For this purpose, professional services are services which do not constitute carrying on a regulated activity, and the provision of which is supervised and regulated by a designated professional body.

The FCA considers that to satisfy the condition in section 327(4) regulated activities cannot be a major part of the practice of the firm. The FCA also considers the following further factors to be among those that are relevant:

1. The scale of regulated activity in proportion to other professional services provided;
2. Whether and to what extent activities that are regulated activities are held out as separate services; and
3. The impression given of how the firm provides regulated activities, for example through its advertising or other promotions of its services.
The FCA's view is that, in the context of section 327 as an exemption from the general prohibition, the conditions in section 327 should be interpreted as not imposing any restriction on the regulated activities that an exempt professional firm may carry on outside the United Kingdom. For further guidance on when a regulated activity is carried on ‘in the United Kingdom’, exempt professional firms are referred to section 418 of the Act and the guidance in PERG 2.4 (Link between activities and the United Kingdom).
Status of exempt professional firm G

On 28 March 2001 the following professional bodies were designated by the Treasury under section 326(1) of the Act:
the Law Society of England & Wales
the Law Society of Scotland
the Law Society of Northern Ireland
the Institute of Chartered Accountants in England and Wales
the Institute of Chartered Accountants of Scotland
the Institute of Chartered Accountants in Ireland
the Association of Chartered Certified Accountants
the Institute of Actuaries.
On 14 January 2005, the Council for Licensed Conveyancers was designated by the Treasury under section 326(1) of the Act.
On 10 February 2006, the Royal Institution of Chartered Surveyors was designated by the Treasury under section 326(1) of the Act.
## Status of exempt professional firm G

### Table Non Exempt activities orders under section 327(6) of the Act (see PROF 2.1.9 G)

As at 31 October 2004, the Treasury had made the following orders under section 327(6):

Chapter 3

The FSA's duties and powers
3.1 The FCA’s duty to keep itself informed

3.1.1 The FCA’s duty to keep itself informed of the Act (Authority’s general duty) imposes on the FCA a duty to keep itself informed about:

(1) the way in which designated professional bodies supervise and regulate the carrying on of exempt regulated activities by exempt professional firms; and

(2) the way in which exempt professional firms carry on exempt regulated activities.

3.1.2 The FCA keeps itself informed in a number of ways. A designated professional body has a duty under section 325(4) of the Act to cooperate with the FCA. Article 94 of the Regulated Activities Order requires each designated professional body to provide the FCA with the information it needs to maintain a public record of persons that are registered with the FCA to conduct insurance mediation activity. The FCA has made arrangements with each of the designated professional bodies about the information they provide to it, to include information about:

(1) complaints and redress arrangements;

(2) complaints volumes and their analysis;

(3) disciplinary action;

(4) supervisory activity;

(5) the activities carried on by exempt professional firms, the risks arising from them and how they are mitigated, for example by monitoring activity or training and competence arrangements; and

(6) the names and addresses of each of their exempt professional firms that carry on, or are proposing to carry on, insurance mediation activity, together with the details of the individuals within the management of the exempt professional firms who are responsible for the insurance mediation activity and, where relevant, the passporting information required by the FCA for the purposes of paragraph 25 of Schedule 3 to the Act (EEA Passport Rights).

3.1.3 Information may also be obtained from exempt professional firms, government departments, trade bodies, consumer organisations and clients of exempt professional firms. The FCA may also commission or carry out reviews of the supervisory and...
regulatory activities of a designated professional body and commission or carry out research about, or surveys of, exempt professional firms or their clients.
3.2 The FCA’s power to make a direction

3.2.1 Section 328 of the Act (Directions in relation to the general prohibition) gives the FCA power to make a direction that the exemption under section 327 of the Act (see PROF 2.1.3 G) does not apply to the extent specified in the direction. Section 328 allows the FCA to make a direction in relation to different classes of person or different descriptions of regulated activity. Section 325(3) of the Act requires the FCA to keep under review the desirability of exercising its powers under Part XX of the Act (Provision of Financial Services by Members of the Professions), including its direction powers under section 328 of the Act.

3.2.2 If the FCA gives a direction in relation to specified classes of person, then any person within those classes may be in contravention of the general prohibition unless:

1. it ceases to carry on regulated activities; or
2. it is an authorised person; or
3. it is an exempt person.

3.2.3 A direction might also cover classes of persons who are members of different designated professional bodies.

3.2.4 Were the FCA to give a direction in relation to a description of regulated activity (for example, dealing in investments as agent), then that activity could no longer be carried on within the terms of the exemption.

3.2.5 (1) The FCA may exercise its direction powers under section 328(6) of the Act in two situations, as set out in (2) and (3).

2. First, the FCA may exercise its direction power under section 328(6)(a) of the Act if it is satisfied that it is desirable in order to protect the interests of clients. In considering whether it is satisfied, the FCA is required by section 328(7) of the Act to have regard, among other things, to the effectiveness of any arrangements made by a designated professional body:

a) for securing compliance with rules made under section 332(1) of the Act (see PROF 4.1.1 G);
(b) for dealing with complaints against its members in relation to the carrying on by them of exempt regulated activities (see PROF 4.1.4 G (2)(d));

(c) in order to offer redress to clients who suffer, or claim to have suffered, loss as a result of misconduct by its members in their carrying on of exempt regulated activities (see PROF 4.1.4 G (2)(d)); and

(d) for cooperating with the FCA under section 325(4) of the Act (see PROF 3.1.2 G).

(3) Second, the FCA may exercise its direction power under section 328(6)(b) of the Act if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the Insurance Mediation Directive. For example, the FCA might wish to do so if it was not receiving from a designated professional body the information it needs to maintain the Financial Services Register (see PROF 7.1).

3.2.6 FCA Section 330 of the Act (Consultation) sets out procedures which the FCA must follow if it wishes to make a direction under section 328(6)(a) or (b). Except as specifically provided in section 330:

(1) the FCA must consult publicly on its proposed direction;

(2) the FCA must have regard to any representations made in response to the consultation; and

(3) if the FCA then gives the proposed direction, it must publish an account of the representations made and its response to them.

3.2.7 FCA The directions the FCA has made under section 328(6)(a) are set out in PROF 3 Annex 1 G. Directions made by the FCA under section 328(6)(b) of the Act are listed in PROF 3 Annex 2 G (The FCA’s duties and powers).
The FCA's duties and powers

**FCA**

Directions made by the FCA under section 328(6)(a) of the Act (see PROF 3.2.7 G)

The FCA has made no directions under section 328(6)(a) of the Act.
The FCA's duties and powers

Directions made by the FCA under section 328(6)(b) of the Act (see PROF 3.2.7 G)

The FCA has made no directions under section 328(6)(b) of the Act.
Chapter 4

Disclosure
4.1 Disclosure rules

The effectiveness of arrangements made by a designated professional body for securing compliance with the rules in this chapter is one of the factors that the FCA must take into account in considering whether to exercise its powers to give a direction under section 328 of the Act (see ■ PROF 3.2.5 G (2) and ■ PROF 3.2.5 G (3).

4.1.1 An exempt professional firm must avoid making any representation to a client that:

(1) it is authorised under the Act or regulated by the FCA; or

(2) the regulatory protections provided by or under the Act to a person using the services of an authorised person are available.

4.1.2 An exempt professional firm must, before it provides a service which includes the carrying on of a regulated activity in the United Kingdom, other than an insurance mediation activity, with or for a client, disclose in writing to the client in a manner that is clear, fair and not misleading that it is not authorised under the Act.

4.1.3 An exempt professional firm, must, before it provides a service which includes the carrying on of an insurance mediation activity with or for a client, make the following statement in writing to the client in a way that is clear, fair and not misleading and no less prominent than any other information provided to the client at the same time:

"[This firm is]/[We are] not authorised by the Financial Conduct Authority. However, we are included on the register maintained by the Financial Conduct Authority so that we can carry on insurance mediation activity, which is broadly the advising on, selling and administration of insurance contracts. This part of our of business, including arrangements for complaints or redress if something goes wrong, is regulated by [DPB]. The register can be accessed via the Financial Conduct Authority website at www.fsa.gov.uk/register/home.do."
4.1.4 FCA

(1) The FCA considers that material provided to satisfy ■ PROF 4.1.3 R (1) and ■ PROF 4.1.3R (2) need not be tailored to the individual client. The disclosures in ■ PROF 4.1.3 R (1) and ■ PROF 4.1.3R (2) may be provided alongside or integrated with other material provided to a client. Exempt professional firms may therefore include the information within engagement letters or client care letters, if they wish.

(2) The FCA considers that it is important that clients understand the implications for them of receiving services from an exempt professional firm that is not authorised under the Act. It is also important that clients understand the implications of the difference between authorisation under the Act and being on the register maintained by the FCA, so that the exempt professional firm can conduct insurance mediation activity, in relation to which activity the regulatory protections established by the Act for the benefit of consumers will not apply. The FCA therefore expects designated professional bodies to make rules covering the information to be provided to clients. These rules should require exempt professional firms to make a disclosure to clients containing the following elements:

(a) where the exempt professional firm conducts a regulated activity other than an insurance mediation activity, a statement that the exempt professional firm is not an authorised person;
(b) the nature of the regulated activities carried on by the exempt professional firm, and the fact that they are limited in scope;
(c) a statement that the exempt professional firm is regulated for these regulated activities by the exempt professional firm’s designated professional body, identifying the designated professional body concerned;
(d) the nature of the complaints and redress mechanisms available to clients in respect of these regulated activities; and
(e) where the regulated activity consists of insurance mediation activity, the statement contained at ■ PROF 4.1.3 R (2).

(3) Exempt professional firms should also ensure that any statement that makes reference to the FCA does not lead a client to suppose that the FCA has direct regulatory responsibility for the exempt professional firm. This could be a breach of ■ PROF 4.1.2 R. This consideration is particularly important in relation to insurance mediation activity, where clients may well fail to appreciate the difference between authorisation under the Act and being included on the register maintained by the FCA so as to permit the exempt professional firm to carry on insurance mediation activity.

4.1.5 FCA

For further guidance on when a regulated activity is carried on ‘in the United Kingdom’, exempt professional firms are referred to section 418 of the Act and the guidance in ■ PERG 2.4.
Chapter 5

Non-mainstream regulated activities
5.1 Application and purpose

Application

This chapter applies to an authorised professional firm that carries on non-mainstream regulated activities.

Purpose

This chapter:

1. contrasts "exempt regulated activities" with "non-mainstream regulated activities";

2. sets out the conditions which must be satisfied for a regulated activity of an authorised professional firm to constitute a non-mainstream regulated activity;

3. refers to other parts of the Handbook in which provisions are disapplied or modified in relation to authorised professional firms when carrying on non-mainstream regulated activities;

4. gives effect to the Distance Marketing Regulations with respect to the non-mainstream regulated activities of authorised professional firms.

Exempt regulated activities contrasted with non-mainstream regulated activities

1. The FCA’s policy is designed to provide so far as possible a level playing field for authorised and unauthorised members of the professions in relation to the carrying on of similar activities.

2. Subject to conditions (see PROF 2), members of designated professional bodies that are not authorised can carry on particular regulated activities, known as exempt regulated activities, and obtain the benefit of the exemption under section 327 of the Act from the general prohibition.

3. In contrast, non-mainstream regulated activities are particular regulated activities carried on by an authorised professional firm. If the professional firm were not authorised under the Act, these same activities would be exempt regulated activities which, if the firm could meet the necessary conditions in section 327, would enable it to benefit from the section 327 exemption.
Therefore, a number of provisions of the Handbook (see PROF 5.3) have been disapplied or modified in respect of these non-mainstream regulated activities of authorised professional firms.

A "non-mainstream regulated activity" is defined in the Glossary as "a regulated activity of an authorised professional firm in relation to which the conditions in PROF 5.2.1 R are satisfied". Conditions (1) to (6) of PROF 5.2.1 R replicate section 327(1)(b)(i), (3), (4), (5) and (6) of the Act, as if those conditions applied to an authorised professional firm.
5.2 Nature of non-mainstream regulated activities

Conditions for non-mainstream regulated activity

A "non-mainstream regulated activity" is a regulated activity of an authorised professional firm in relation to which the following conditions are satisfied:

1. the firm must not receive from a person other than his client any pecuniary reward or other advantage, for which he does not account to his client, arising out of the carrying on of the regulated activity;

2. the manner of the provision by the firm of any service in the course of carrying on the regulated activity must be incidental to the provision by it of professional services (see PROF 5.2.2 R);

3. the regulated activity must not be of a description, or relate to an investment of a description, specified in The Financial Services and Markets Act 2000 (Professions) (Non-Exempt Activities) Order 2001 (SI 2001/1227) or in any other order made by the Treasury under section 327(6) of the Act (see PROF 2 Annex 2 GG);

4. there must not be in force any direction under section 328 of the Act (Directions in relation to the general prohibition) in relation to:
   (a) a class of person which would have included the firm were it not an authorised person; or
   (b) a description of regulated activity which includes the regulated activity the firm proposes to carry on;

5. the regulated activity must be an activity which exempt professional firms which are members of the same designated professional body as the authorised professional firm are permitted to carry on under rules made by that body as required by section 332(3) of the Act; and
(6) the *authorised professional firm* is subject to the rules referred to in (5).

[deleted]

In PROF 5.2.1 R (2), "professional services" means services:

1. which do not constitute a *regulated activity*; and
2. the provision of which is supervised and regulated by a *designated professional body*.
5.3 Reference to other sourcebooks and manuals

Introduction

The parts of the Handbook in which provisions are disapplied or modified in relation to authorised professional firms when carrying on non-mainstream regulated activities include those described in PROF 5.3.1A G to PROF 5.3.9 G.

General provisions

■ 4.3.5 R provides that ■ 4.3.1 R (Disclosure in letters to private customers) does not apply to an authorised professional firm with respect to its non-mainstream regulated activities.

Conduct of business sourcebook

■ COBS 18.11 provides that COBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities, except for:

1) the fair, clear and not misleading rule;

1A) the financial promotion rules, but only in limited circumstances;

2) (where these are insurance mediation activities) ■ COBS 7 (Insurance mediation) unless:

(a) the designated professional body of the firm has made rules which implement some or all of articles 12 and 13 of the Insurance Mediation Directive;

(b) those rules have been approved by the FCA under section 332(5) of the Act; and

(c) the firm is subject to the rules in the form in which they were approved;

3) ■ COBS 8.1.3 R (Client agreements), except for the requirement to provide information on conflicts of interest; and

4) ■ COBS 5.2 (E-commerce).
5.3.3 Training and Competence sourcebook

TC Appendix 3 provides that TC, which imposes the substantive training and competence requirements for retail clients or customers, does not apply to an authorised professional firm with respect to its non-mainstream regulated activities.

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5.3.4 Senior Management Arrangements, Systems and Controls

SYSC 3.2.6A R to SYSC 3.2.6J G and SYSC 6.3 (Financial crime), in relation to money laundering, do not apply to authorised professional firms when carrying on non-mainstream regulated activities.

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5.3.5 Supervision manual

SUP 10A.1.17 R provides that SUP 10A (Approved persons) does not apply (except in respect of the required functions) to an authorised professional firm in respect of its non-mainstream regulated activities. So a person such as a partner, whose only regulated activities are incidental to his professional services, in an authorised professional firm whose principal purpose is to carry on activities other than regulated activities, need not be an approved person.

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5.3.6 Dispute resolution: Complaints sourcebook

DISP 1.1.5 R (3) provides that DISP 1 (Treating complainants fairly) only applies to an authorised professional firm in so far as its mainstream regulated activities are concerned. DISP 2.3.4 R further provides that a complaint about an authorised professional firm cannot be handled under the Compulsory Jurisdiction of the Financial Ombudsman Service if it relates solely to non-mainstream regulated activity and can be handled by a designated professional body. This is because such a complaint will be handled by the relevant professional body.

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5.3.7 Market Conduct sourcebook

MAR 4.4.1 R (3) provides that MAR 4, which deals with the endorsement of the City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisitions of Shares, does not have effect in relation to an authorised professional firm in respect of non-mainstream regulated activity.

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5.3.8 Mortgages: Conduct of business sourcebook

MCOB 1.2.10 R provides that MCOB does not apply to an authorised professional firm with respect to its non-mainstream regulated activities except for MCOB 2.2 (Clear, fair and not misleading communication), MCOB 3 (Financial promotion) and to a limited extent MCOB 4.4 (Initial disclosure requirements).

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5.3.9 CASS 1.2.4 R provides that with the exception of CASS 1 and the insurance client money chapter, CASS does not apply to authorised professional firms when carrying on non-mainstream regulated activities. CASS 1.2.5 R further provides that if the non-mainstream regulated activities are insurance mediation activity, CASS 5 (the insurance client money chapter) does not apply to an authorised professional firm, if the firm’s designated professional body has rules applicable to the firm which implement the Insurance Mediation Directive and which are in the form approved by the FCA under section 332(5) of the Act.
5.3.10

ICOBS does not apply to an authorised professional firm with respect to its non-mainstream regulated activities (see ICOBS 1 Ann 1, Part 1, 3.1R, except for:

(a) the provisions on communications to clients and financial promotions (ICOBS 2.2);

(b) the e-commerce provisions (ICOBS 3.2);

(c) status disclosure requirements in relation to complaints procedures (ICOBS 4.1); and

(d) provisions in ICOBS which implement articles 12 and 13 of the Insurance Mediation Directive (ICOBS 4.1 and ICOBS 5.2.3 R), except to the extent that the firm is subject to equivalent rules of its designated professional body which have been approved by the FCA.

(2) [deleted]
(1) In addition to those provisions of the Distance Marketing Regulations which apply directly, an authorised professional firm must, with respect to its non-mainstream regulated activities, comply with regulations 7 to 11 and 15 of the Distance Marketing Regulations. Those regulations have effect to cancel distance contracts the making or performance of which by such firms constitutes a non-mainstream regulated activity.

(2) Paragraph (1) does not apply in relation to regulations 7 to 8 and 15 if the designated professional body of the authorised professional firm has rules equivalent to some or all of those regulations and:

(a) those rules have been approved by the FCA under section 332(5) of the Act; and

(b) the authorised professional firm is subject to those rules in the form in which they have been approved;

in which case those regulations are disappplied to the extent that they are implemented by the rules of the designated professional body.

The effect of PROF 5.4.1 R is that it allows designated professional bodies to make rules which allow an authorised professional firm to comply with the Distance Marketing Regulations in respect of its non-mainstream regulated activities in the same way as an exempt professional firm which is a member of the same designated professional body in respect of its exempt regulated activities.
Chapter 6

Fees
6.1 [deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]

6.1.1 [Deleted]
6.1.2 [Deleted]
6.1.3 [Deleted]
6.1.4 [Deleted]
6.1.5 [Deleted]
### Section 6.2

[deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]

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6.3 [deleted: the provisions in relation to designated professional bodies are set out in FEES 1, 2, 3 and 4]

6.3.1 [Deleted]
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Professional Firms

Chapter 7

Insurance mediation activity
7.1 Register of persons carrying on insurance mediation activity

Background


The FCA's obligation to maintain a record

Article 93 of the amended Regulated Activities Order requires the FCA to maintain an up-to-date record of every unauthorised person, whether an appointed representative or an exempt professional firm that carries on, or is proposing to carry on, insurance mediation activity and to whom the general prohibition does not apply in relation to the carrying on of such an activity. In relation to exempt professional firms the general prohibition does not apply by virtue of section 327 of the Act.

The FCA is not to include an exempt professional firm in the register relating to unauthorised persons if:

(1) under a direction given by the FCA under section 328(1) of the Act, section 327(1) of the Act does not apply in relation to the carrying on by it of insurance mediation activity; or

(2) the FCA has made an order under section 329(2) of the Act disapplying section 327(1) of the Act in relation to the carrying on by the exempt professional firm of insurance mediation activity.

Provision of information to the FCA

Article 94 of the Regulated Activities Order obliges a designated professional body to provide the FCA with the information it needs to maintain the record referred to in PROF 7.1.2 G of every unauthorised person that carries on, or proposes to carry on, insurance mediation activity and keep it up to date. This information needs to include the details referred to in PROF 7.1.7 G. This is the responsibility of the designated professional body and not each exempt professional firm.

Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227)

(1) The attention of exempt professional firms is drawn to the significance of The Financial Services and Markets Act 2000 (Professions) (Non-Exempt) Activities Order 2001 (SI 2001/1227), as amended by The Financial Services
and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476). The effect of these amendments is that exempt professional firms may not carry on certain regulated activities which relate to a contract of insurance in reliance on the Part XX exemption unless the exempt professional firm is included in the record of unauthorised persons carrying on insurance mediation activity maintained by the FCA under article 93 of the Regulated Activities Order.

(2) Each exempt professional firm carrying on, or proposing to carry on, insurance mediation activity should ensure that at all material times the name of the firm and the requisite details are included in the record maintained by the FCA. Any such exempt professional firm carrying on, or proposing to carry on, insurance mediation activity whose name does not appear in the record maintained by the FCA is likely to be breaching the general prohibition which is a criminal offence under section 23 of the Act.

Financial Services Register

In order to comply with its obligations to maintain a record of unauthorised persons that carry on, or are proposing to carry on, insurance mediation activity, the FCA has established an appropriate record which forms part of the record maintained by the FCA under section 347 of the Act. The record maintained by the FCA under section 347 of the Act is known as the Financial Services Register. The Financial Services Register therefore contains a record of each authorised and unauthorised person that carries on, or proposes to carry on, insurance mediation activity.

The information to be included on the record in relation to exempt professional firms will, as required by the Insurance Mediation Directive, include details of:

(1) the name and address of each exempt professional firm that carries on, or is proposing to carry on, insurance mediation activity;

(2) where the exempt professional firm is not an individual, the names of the individuals within the management of the exempt professional firm who are responsible for the insurance mediation activity; and

(3) each EEA State in which the exempt professional firm under an EEA right derived from the Insurance Mediation Directive:

(a) has established a branch; or

(b) is providing cross border services.

FCA Website

The Financial Services Register can be accessed through the FCA website under the link www.fca.org.uk/firms/systems-reporting/register.
7.2 Passporting under the Insurance Mediation Directive

7.2.1 All persons that are on the register maintained by the FCA in accordance with article 3 of the Insurance Mediation Directive, and so permitted to conduct insurance mediation activity, are entitled to exercise the EEA right conferred upon them by article 6 of the Insurance Mediation Directive to establish a branch or provide services relating to insurance mediation activity in another EEA State. Both authorised professional firms and exempt professional firms that are so registered by the FCA get the benefit of these passporting rights.

7.2.2 Any authorised professional firm or exempt professional firm that is contemplating the exercise of rights under article 6 of the Insurance Mediation Directive to establish a branch or provide services relating to insurance mediation activity in another EEA State is referred to SUP 13 (Exercise of passport rights by UK firms) for further details as to the applicable process. Note that both authorised professional firms and exempt professional firms are UK firms for the purposes of the Handbook, including SUP 13.

7.2.3 A UK firm proposing to establish a branch in another EEA State for the first time under an EEA right derived from the Insurance Mediation Directive must first satisfy the conditions in paragraphs 19(2),(4) and (5) of Part III of Schedule 3 to the Act (EEA Passport Rights). These include the requirement that the firm must at the outset give the FCA a notice in the required form of its intention to establish the branch. SUP 13.3.2 G to SUP 13.3.2C G and SUP 13.3.5 G detail the procedure to be followed once such a notice of intention has been received by the FCA. SUP 13.5.1 R (Specified contents: notice of intention to establish a branch) and SUP 13.6.9A G (Firms passporting under the Insurance Mediation Directive) will also be relevant.

7.2.4 A UK firm proposing to provide cross border services into another EEA State for the first time under an EEA right derived from the Insurance Mediation Directive must first satisfy the conditions in paragraph 20(1) of Part III of Schedule 3 to the Act (EEA Passport Rights). The UK firm must at the outset give the FCA a notice in the required form of its intention to provide the cross border services into another EEA State. In this instance, the relevant procedure to be followed is outlined in SUP 13.4.2 G, SUP 13.4.4 G and SUP 13.4.5 G, SUP 13.5.2 R (Specified contents: notice of intention to provide cross border services) and SUP 13.7.11 G will also be relevant.
## Professional Firms

### PROF TP 1

#### Transitional provisions

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<td>1</td>
<td>PROF 4.1.2 R G</td>
<td></td>
<td>The FCA considers that the issue by an exempt professional firm of a letter to a client on a letterhead that includes a statement that it is &quot;authorised&quot; will be in breach of PROF 4.1.2 R. This includes a statement such as: 'This firm is authorised in the conduct of investment business by [name of recognised professional body] under the Financial Services Act 1986.' However, an exempt professional firm which has been authorised for investment business by a recognised professional body under the Financial Services Act 1986 may continue to use stocks of notepaper and other material that discloses its status under that act, provided that it strikes through the disclosure statement.</td>
<td>From commencement</td>
<td>Commencement</td>
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<td>2</td>
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<td></td>
<td>GEN contains some technical transitional provisions that apply throughout the Handbook and which are designed to ensure a smooth transition at commencement.</td>
<td>From commencement</td>
<td>Commencement</td>
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Professional Firms

Schedule 1
Record keeping requirements

Sch 1.1 G
FCA

There are no record keeping requirements in PROF.
Professional Firms

Schedule 2
Notification requirements

Sch 2.1 G

There are no notification or reporting requirements in PROF.
Professional Firms

Schedule 3
Fees and other required payments

Sch 3.1 G

There are no requirements for fees or other payments in PROF.
Professional Firms

Schedule 4
Powers exercised

Sch 4.1 G
The following powers and related provisions in the Act have been exercised by the FSA to make the rules in PROF:

- Section 138 (General rule-making power)
- Section 156 (General supplementary powers)
- Section 332(1) (Rules in relation to persons to whom the general prohibition does not apply)

Sch 4.2 G
The following powers in the Act have been exercised by the FSA to give the guidance in PROF:

- Section 157(1) (Guidance)
Professional Firms

Schedule 5
Rights of action for damages

Sch 5.1 G

The table below sets out the rules in PROF contravention of which by an authorised person may be actionable under section 138D of the Act (Actions for damages) by a person who suffers loss as a result of the contravention.

Sch 5.2 G

If a "YES" appears in the column headed "For private person?", the rule may be actionable by a "private person" under section 138D (or, in certain circumstances, his fiduciary or representative; see article 6(2) and (3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001 No. 2256)). A "Yes" in the column headed "Removed" indicates that the FCA has removed the right of action under section 138D(3) of the Act. If so, a reference to the rule in which it is removed is also given.

Sch 5.3 G

The column headed "For other person?" indicates whether the rule may be actionable by a person other than a private person (or his fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of person by whom the rule may be actionable is given.

Sch 5.4 G

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<td>Conditions for non-mainstream regulated activity</td>
<td></td>
<td>Yes</td>
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Professional Firms

Schedule 6
Rules that can be waived

Sch 6.1 G
As a result of section 138A of the Act (Modification or waiver of rules) the FCA has power to waive all its rules, other than rules made under section 137O (Threshold condition code), section 247 (Trust scheme rules) or section 248 (Scheme particulars rules) of the Act. However, if the rules incorporate requirements laid down in European directives, it will not be possible for the FCA to grant a waiver that would be incompatible with the United Kingdom's responsibilities under those directives.
Regulated Covered Bonds
Regulated Covered Bonds

RCB 1 Introduction
1.1 Introduction to sourcebook

RCB 2 Applications for registration
2.1 Application and purpose of chapter
2.2 Applying for registration
2.3 Determination of registration
2 Annex 1 Application for the admission to the register of issuers and register of regulated covered bonds

RCB 3 Notifications
3.1 Application and Purpose
3.2 Annual confirmations of compliance and asset pool monitor
3.3 Asset pool notifications
3.4 Covered Bond issuance notifications
3.5 Other notifications
3.6 Fees and other matters
3 Annex 1 Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook
3 Annex 2 Asset pool notification form
3 Annex 3 Asset and liability profile form
3 Annex 4 Indicative terms form
3 Annex 5 Issuance form
3 Annex 6 Cancellation form
3 Annex 7A Loan level disclosure form
3 Annex 7B Guidance on loan level disclosure form

RCB 4 Enforcement powers
4.1 Application and purpose
4.2 Enforcement powers and penalties

RCB 5 Fees
5.1 [Deleted]
5.2 [Deleted]
Warning and decision notices

6.1 Application and purpose
6.2 Policy on decision and warning notices

Transitional Provisions and Schedules

Sch 1 Record keeping requirements
Sch 2 Notification requirements
Sch 3 Fees and other requirement payments
Sch 4 Powers exercised
Sch 5 Rights of action for damages
Sch 6 Rules that can be waived
Regulated Covered Bonds

Chapter 1

Introduction
1.1 Introduction to sourcebook

Application

This sourcebook applies to issuers and owners in relation to regulated covered bonds.

Purpose

The general purpose of this sourcebook is to set out the guidance, directions and rules made by the FCA under the RCB Regulations. Those regulations enable bonds to be issued which comply with Article 52(4) of the UCITS Directive.

This sourcebook should be read together with the RCB Regulations.

Other relevant provisions

This section refers to some of the other parts of the FCA Handbook and PRA Handbook which may be relevant to regulated covered bonds.

Investors in regulated covered bonds may be able to take advantage of different regulatory treatments depending on what type of investor they are.

BIPRU firms which have exposures to covered bonds which meet the requirements set out in the provisions of BIPRU 3.4.106 R to BIPRU 3.4.109 R, whether made by the FCA or the PRA, may benefit from reduced risk weights as set out in the version of BIPRU 3.4.110 R applying to that BIPRU firm.

An insurer (which is not a non-directive friendly society, incoming EEA firm or an incoming Treaty firm) may benefit from increased counterparty limits under INSPRU 2.1.22 R (3)(b).

UCITS schemes and non-UCITS retail schemes may benefit from less onerous spread requirements and increased investment limits under COLL 5.2.11 R and COLL 5.6.7 R.

Issuers which are subject to an obligation to publish a prospectus under the Prospectus Directive are required by Article 3 of the PD Regulation to disclose risk factors. These requirements are set out in PR 2.3.1 EU and PR App 3.1.1 EU.
(2) In complying with these obligations, *issuers* should consider disclosing the risk that actions by a regulatory authority in relation to the *issuer* may adversely affect the ability of the *issuer* to meet its obligations to investors or the ability of the *owner* to meet its guarantee obligations to investors. An example of such action may include restricting the *issuer's* ability to transfer further *assets* to the *asset pool*.
Chapter 2

Applications for registration
2.1 Application and purpose of chapter

Application

This chapter applies to issuers.

Purpose

This chapter sets out the requirements that an issuer must follow to apply for registration as a regulated covered bond issuer and for registration of a regulated covered bond under Regulations 8(a) and 8(b) of the RCB Regulations (applications to the FCA for registration).
2.2 Applying for registration

Form, manner and verification of application

2.2.1 FCA
The issuer must apply for registration using the form at ■ RCB 2 Annex 1D (application for registration).

2.2.2 FCA
■ RCB 3.6.5 D sets out the methods the issuer may use to send the form to the FCA.

2.2.3 FCA
Until the application has been determined by the FCA, the issuer must inform the FCA of any significant change to the information given in the application immediately it becomes aware of that change.

2.2.4 FCA
The form and content of the application documentation is a matter for direction by the FCA, which will determine what additional information and documentation may be required on a case-by-case basis.

2.2.5 FCA
The FCA will not treat the application as having been received until it receives the registration fee (see ■ RCB 5.2.5 R) and all relevant documentation requested by the FCA before its on-site review of the application.

2.2.6 FCA
The issuer must ensure that a director or a senior manager of the issuer verifies the application by confirming on the FCA’s form that the issuer has obtained the appropriate third party advice or reports as required by ■ RCB 2.3.16 D and is satisfied that:

1. the information provided in the application is correct and complete; and
2. the arrangements relating to the covered bond or programme will comply with the requirements in the RCB Regulations and in RCB.

2.2.7 FCA
The FCA expects the issuer to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation the senior manager gives in relation to compliance with the requirements of the RCB Regulations and RCB.

2.2.8 FCA
The issuer must ensure that the senior manager, who verifies the application for registration under this section, gives their consent to the FCA displaying their confirmation of compliance with the relevant requirements on the FCA’s website.
To enable the FCA to be satisfied that the issuer and the proposed owner will comply with requirements imposed on the issuer or owner, as the case may be, by or under the RCB Regulations, the applicant should use the application form to provide relevant details of the proposed covered bond or programme and demonstrate how each of the requirements will be complied with.

(1) The FCA’s application form covers both issuer registration and covered bond registration as the FCA will not normally consider applications for issuer registration in isolation from the application for registration of the covered bond.

(2) An issuer which has been admitted to the register of issuers should use the same form to apply for registration of subsequent covered bonds or programmes.

(3) The issuer does not need to apply for registration of individual issuances from a programme which has already been registered, but does need to notify the FCA of the issuance under RCB 3.4.1 D.

In relation to registration of an issuer of regulated covered bonds, the FCA will need to be satisfied that the issuer’s compliance with the requirements of the regulatory system has been adequate and does not give rise to any material cause for concern over the issuer’s ability to issue regulated covered bonds in compliance with the RCB Regulations.

To demonstrate that the issuer and the proposed owner will comply with Regulation 17, and Regulations 23 and 24 of the RCB Regulations (capability of the asset pool to cover claims), the issuer should set out what it considers to be the risks of the regulation not being complied with and show how those risks have been adequately mitigated by reference to the tests and provisions set out in the covered bond or programme documentation.

Asset pool of sufficient quality

Regulations 17(2)(d) (requirements on issuer relating to the asset pool) and 23(2) (requirements on owner relating to the asset pool) require the issuer of a regulated covered bond and the owner of the relevant asset pool to make arrangements so that the asset pool is of sufficient quality to give investors confidence that in the event of the failure of the issuer there will be a low risk of default in the timely payment by the owner of claims attaching to a regulated covered bond.
The FCA will:

1. expect the issuer to demonstrate that it has in place appropriate systems, controls, procedures and policies, including in relation to risk management, underwriting, arrears and valuation;

2. expect the issuer to demonstrate that the cash-flows generated by the assets would be sufficient to meet the payments due in a timely manner including under conditions of economic stress and in the event of the failure of the issuer;

3. take account of any over collateralisation used to mitigate these risks to achieve the desired outcome so that, for example, potential credit losses and mismatches are offset; and

4. not only consider the probability of default in timely payment of claims, but also the loss in the event of a default. This will include consideration of recovery assumptions, timing and costs.

The risk factors which the FCA will take into account in assessing the issuer’s and owner’s compliance with Regulations 17(2)(d) (general requirements on issuer in relation to the asset pool) and 23(2) (requirements on owner relating to the asset pool) will include credit risk of the assets, concentration risk, market risk and counterparty risk.

Credit risk

(1) The credit risk of an asset is the risk of loss if another party fails to perform its obligations or fails to perform them in a timely fashion.

(2) Where, for example, the asset pool includes residential mortgages the relevant factors which the FCA may consider include:

(a) whether the asset pool contains (or could contain) loans made to individuals who have been made bankrupt or have had court judgments made against them;

(b) the extent to which the asset pool contains (or could contain) loans made to individuals whose earnings have been self-certified rather than independently verified;

(c) whether the asset pool contains (or could contain) loans which have a higher credit risk in terms of individuals' willingness or ability to pay (for example, because they have high loan-to-value ratios, low debt service ratios or high income multipliers);

(d) the quantity and duration of mortgages which are in arrears;

(e) the length of time the loan has been in place; and

(f) the purpose and terms of the mortgage (for example, owner occupied, buy-to-let, interest only, repayment, fixed rate, variable rate, off-set or endowment).

(3) Where, for example, the asset pool includes commercial mortgages, the relevant factors the FCA may consider in addition to any of the relevant residential mortgage factors described above, include:

(a) the type of property to which the mortgage relates (for example whether it is office, retail, industrial);
(b) the terms of the loans (including size, interest rate, maturity, options, representations and warranties); and

(c) occupation levels, rental income and terms of rental agreements of the property secured.

**Concentration risk**

Concentration risk is the risk of loss from exposures being limited in number or variety. The relevant factors the FCA may consider include:

1. the level of granularity of the asset pool (i.e. what is the number and size distribution of assets in the pool);

2. whether the borrowers or collateral is unduly concentrated in a particular industry, sector, or geographical region.

**Market risk**

Market risk is the risk that arises from fluctuations in the values of, or income from, assets or in interest or exchange rates. The relevant factors the FCA may consider include whether the hedging agreements (defined in Regulation 1(2) of the RCB Regulations as agreements entered into or assets held as protection against possible financial loss) adequately protect against any adverse mismatched cash-flows due to changes in market variables.

**Counterparty risk**

Counterparty risk is the risk that the counterparty to a transaction could default before the final settlement of the transactions cash flows. The relevant factors the FCA may consider include whether the:

1. counterparty has an appropriate credit rating;

2. counterparty can unilaterally terminate the hedging agreement, and if so under what circumstances;

3. contractual arrangements contain appropriate termination procedures (for example, what provisions apply in the event of default or in respect of the calculation of termination payments); and

4. contractual arrangements provide adequately for what is to happen in the event of issuer default.

**Assessment of risk factors**

The FCA will assess each risk factor separately and then assess any inter-dependencies and correlations to form a judgment on the quality of the asset pool as a whole. For example, an asset pool which is of high credit quality and so low risk due to a combination of factors such as owner occupation, low income multiples, full valuation methodologies, and a strong payments track record, may permit another factor such as high loan-to-value ratios, that would otherwise be considered as inconsistent with high quality, to be included.
(2) The more that an asset pool consists of loans involving risks such as high loan-to-value ratios, self-certification, borrowers with poor credit profiles, and low borrower affordability, the less likely it is, without other mitigating factors, to be of sufficiently high quality to meet the requirements in Regulations 17(2)(d) (general requirements on issuer in relation to the asset pool) and 23(2) (requirements on owner relating to the asset pool) of the RCB Regulations.

**Covered bonds collateralised by real estate**

In assessing whether the asset pool is of sufficient quality, the FCA will have regard to the requirements about legal certainty referred to in BIPRU 3.4.64 R, the requirements about monitoring of property values in BIPRU 3.4.66 R and the valuation rules in BIPRU 3.4.77 R to BIPRU 3.4.80 R.

**Rectifying non-compliance**

The FCA expects the issuer to demonstrate that there are provisions in the covered bond or programme that adequately deal with:

1. the identification and rectification of any breach of Regulations 17(2) (general requirements on issuer in relation to the asset pool) and 24 (requirements on owner relating to the asset pool) of the RCB Regulations;

2. the appointment of replacements for parties, for example servicers, cash managers or paying agents; and

3. the orderly winding-up of the asset pool in the event that breaches of Regulations 17(2) and 24 are not rectified in a timely way.

**Representation of bond investors’ views and interests**

The FCA expects the issuer to demonstrate, as part of showing that Regulations 17 (general requirements on issuer in relation to the asset pool) and 24 (requirements on owner relating to the asset pool) of the RCB Regulations will be complied with, that there are provisions in the covered bond or programme which enable the views and interests of investors in the regulated covered bond to be taken account of in an appropriate and timely way by a suitably qualified, adequately resourced, third party who acts independently, such as a bond trustee.

**Third party advice and reports**

The issuer must obtain written advice and reports regarding the compliance of the issuer and the relevant covered bond or programme with the requirements in the RCB Regulations and RCB from suitable independent third party advisers, such as lawyers and accountants, before making an application.

**Legal advice**

(1) The FCA expects legal advice to deal adequately with at least the following matters in relation to the actual or proposed arrangements:

   a) whether the transfer of the assets to the owner would be upheld in the event of liquidation or administration, or similar collective insolvency proceedings, of the issuer or the transferor (if different from the issuer);
(b) the risk of the transfer of an asset to the owner being re-characterised as the creation of a security interest;

(c) the risk of an asset transferred to the owner being clawed back under insolvency law provisions (such as rules against preferences, or transactions at an undervalue);

(d) whether the contractual arrangements limit eligible property to the items listed in Regulation 2(1) of the RCB Regulations (meaning of eligible property);

(e) whether the contractual arrangements limit the situation of eligible property to locations permitted under Regulation 2(2) of the RCB Regulations (situation of eligible property);

(f) whether the contractual arrangements limit the asset pool to items listed in Regulation 3 of the RCB Regulations (composition of asset pool);

(g) if security is granted over the asset pool by the owner, the enforceability of that security and any relevant legal limitations;

(h) whether the owner meets the requirements set out in Regulation 4 of the RCB Regulations (meaning of owner);

(i) whether the owner is a company or limited liability partnership which has its registered office in the United Kingdom and whether the contractual arrangements support an analysis that the owner’s "centre of main interests" (defined in Regulation 1(2) of the RCB Regulations as having the same meaning as in Article 3(1) of Council Regulation (EC) No. 1346/2000 of 29 May 2000 on insolvency proceedings) is also situated in the United Kingdom;

(j) whether the contractual arrangements are consistent with the obligation of the issuer to lend sums derived from the issue of a regulated covered bond to the owner of the relevant asset pool under Regulation 16 of the RCB Regulations (sums derived from the issue of regulated covered bonds);

(k) whether the contractual arrangements provide that if the owner is wound up, the asset pool will be used to reimburse the claims of investors in regulated covered bonds under the priority set out in Regulation 27 of the RCB Regulations (priority in a winding-up of an owner);

(l) whether the contractual arrangements provide for the appointment of a person who will enable the views and interests of investors in the regulated covered bond to be taken account of in an appropriate and timely way as explained in RCB 2.3.15 G;

(m) whether the contractual arrangements provide for the identification and rectification of breaches of Regulation 17 of the RCB Regulations (general requirements on issuer relating to the asset pool) and Regulations 23 and 24 of the RCB Regulations (requirements relating to the asset pool) and the orderly winding-up of the asset pool in the event that the breaches cannot be rectified; and

(n) the enforceability of the contractual arrangements.

(2) Where assets are situated outside England and Wales, the FCA expects the issuer to obtain advice on whether the law of those jurisdictions impacts on the enforceability of security and the availability of those assets. Relevant issues to consider may include true sale, perfection of security, priority and recognition of insolvency proceedings, and foreclosure rights.
Accountancy reports

(1) The FCA expects the report from the accountants to address at least the following matters:

(a) that the level of over collateralisation meets the limits set out in the covered bond arrangements which are designed to ensure compliance with the requirement that the asset pool is capable of covering claims attaching to the bond in Regulation 17 (requirements on issuer in relation to the asset pool) of the RCB Regulations; and

(b) that appropriate due diligence procedures (which should include an analysis of a representative statistical sample at a 99% confidence level of the assets in the asset pool) have been carried out to check whether:

(i) the attributes of the asset pool correspond accurately to supporting information obtained from other sources (for example, in the case of mortgage pools, that information such as the mortgage amount, value, term, type and location correspond to land registry records, valuation reports and loan agreements);

(ii) the attributes of the asset pool are appropriately reflected on the records which are maintained in order to comply with the requirements of Regulations 17(2)(a) and 24(1)(a)(i) of the RCB Regulations (requirement to keep a record of each asset in the asset pool) and on the issuer’s systems; and

(iii) the issuer’s analysis of the assets provided to the FCA is accurate.

Providing advice and reports to the FCA

The FCA’s use of its power under Regulation 12 of the RCB Regulations (requirement of further information to determine application) may include requiring the issuer to provide copies of the advice or reports referred to in ■ RCB 2.3.16 D to the FCA.

Liquid assets

Assets which would be eligible for inclusion in a liquidity buffer under ■ BIPRU 12.7 can be liquid assets for the purposes of limb (a) of the definition of liquid assets in Regulation 1(2) of the RCB Regulations. The FCA will also expect that liquid assets which consist of deposits should be held in the same currency or currencies as the regulated covered bonds issued by the issuer.
Application for the admission to the register of issuers and register of regulated covered bonds

This annex consists only of one or more forms. Forms are to be found through the following address:

Application for the admission to the register of issuers and register of regulated covered bonds - FSA/docs/rcb/rcb_chapter2_annex1d_20130401.doc
3.1 Application and Purpose

Application
This chapter applies to issuers, asset pool monitors and owners.

Purpose
This chapter sets out the reporting and notifications requirements under Regulations 17A, 18, 20, 24 and 25 of the RCB Regulations.
### 3.2 Annual confirmations of compliance and asset pool monitor

**Form of confirmation and use of third party advisers and asset pool monitor’s report**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.2.1</td>
<td>The issuer must send to the FCA annual written confirmation of compliance with Regulations 16 (sums derived from the issue of regulated covered bonds) and 17 (general requirements on the issuer in relation to the asset pool) of the RCB Regulations in the form set out in RCB 3 Annex 1D (annual confirmation of compliance).</td>
</tr>
<tr>
<td>3.2.2</td>
<td>Before providing the confirmation required by this section, the issuer must obtain and consider written advice or reports from suitable independent third parties such as the asset pool monitor and, where appropriate, lawyers.</td>
</tr>
<tr>
<td>3.2.3</td>
<td>The FCA expects the issuer to be able to justify any reliance it places on advice or reports which are not reasonably contemporaneous with the confirmation.</td>
</tr>
<tr>
<td>3.2.4</td>
<td>The FCA expects the asset pool monitor’s report to address at least the matters to be checked and due diligence procedures set out in RCB 2.3.18 G. The FCA may also specify additional matters that the asset pool monitor’s report should address in relation to a particular issuer.</td>
</tr>
<tr>
<td>3.2.4A</td>
<td>The FCA’s use of its power under Regulation 18 of the RCB Regulations may include requiring the issuer to provide to the FCA copies of the advice or reports referred to in RCB 3.2.2 D.</td>
</tr>
<tr>
<td>3.2.4B</td>
<td>The issuer must provide a copy of the asset pool monitor’s report to the FCA when it sends the confirmation required by this section to the FCA.</td>
</tr>
</tbody>
</table>

**Timing of confirmation date**

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
</table>
| 3.2.5   | (1) The first confirmation date in relation to the annual confirmation must be the earlier of any date the issuer selects, or the date 12 months from the registration date.  

(2) Subsequent confirmations must be made on the anniversary of the first confirmation date. |
| 3.2.6   | The issuer must send each confirmation to the FCA within one month after the relevant confirmation date. |
3.2.7 FCA

Period covered by confirmation

The first confirmation must cover compliance during the period from the registration date up to the confirmation date referred to in RCB 3.2.5 D (1).

3.2.8 FCA

Subsequent confirmations must cover compliance for the period from the last confirmation date to the date of the current confirmation.

Verification of confirmation

The issuer must ensure that a director or a senior manager signs the annual confirmation and confirms on the FCA’s form that the issuer has obtained the appropriate third party advice or reports required by this section.

3.2.9A FCA

Where possible, the director or senior manager who signs the annual confirmation should be the same director or senior manager who has verified the application for registration under RCB 2.2.6 D. If the director or senior manager is different to the director or senior manager who verified the application for registration, the issuer should notify the FCA at least one month before sending the confirmation to the FCA.

Notifications by the owner

3.2.10 FCA

If the issuer is in insolvency, the owner must send the FCA under RCB 3.2.1 D:

(1) a confirmation of compliance within one month of the date of insolvency; and

(2) annual confirmations by the same dates as the date the confirmations under RCB 3.2.5 D are due.

3.2.11 FCA

(1) The owner must ensure that a duly authorised representative signs the confirmation and confirms on the FCA’s form that the owner has obtained the appropriate third party advice or reports required by this section.

(2) The owner must obtain appropriate advice in the same manner as set out in RCB 3.2.2 D and must provide a copy of the asset pool monitor’s report to the FCA as set out in RCB 3.2.4B D.

Review by asset pool monitor

3.2.12 FCA

In addition to requiring the asset pool monitor to prepare an annual report, Regulation 17A of the RCB Regulations requires that the asset pool monitor must inspect the compliance of the issuer or owner (as the case may be) with the requirements in Regulations 16, 17 or 24 of the RCB Regulations once every 12 months.

3.2.13 FCA

The FCA expects the inspection by the asset pool monitor of the compliance of the issuer or owner (as the case may be) with the relevant requirements in the RCB Regulations to address at least the matters to be checked and due diligence procedures set out in RCB 2.3.18 G. The FCA expects that the inspection will be conducted on an agreed-upon-procedures basis.

3.2.14 FCA

As required under Regulation 17A of the RCB Regulations, if it appears to the asset pool monitor that the issuer or owner (as the case may be) has failed to comply with
the requirements set out in Regulations 17 or 24 of the RCB Regulations, or has not provided all relevant information or explanations, the asset pool monitor must report that to the FCA in writing as soon as possible.

**Change of asset pool monitor**

If the asset pool monitor is changed, the issuer (or owner, as the case may be) should notify the FCA when the new asset pool monitor is appointed, giving the name of the new asset pool monitor and details of the reason for the change.
3.3 Asset pool notifications

Form of notifications

3.3.1 FCA
The issuer must send to the FCA, information relating to the asset pool, in the form set out in RCB 3 Annex 2D (asset notification form), and information relating to the regulated covered bonds issued under the programme, in the form set out in RCB 3 Annex 3 D (asset and liability profile form).

3.3.2 FCA
The issuer must send the asset notification form to the FCA each month following the registration date, and the asset and liability profile form to the FCA within one month of the end of each quarter following the registration date.

3.3.2A FCA
The issuer must send to the FCA loan-by-loan level data relating to the asset pool in the form set out in RCB 3 Annex 7A D within one month of the end of each quarter following any issuance of regulated covered bonds after 1 January 2013. Guidance on how to complete this form is set out in RCB 3 Annex 7B G.

Notifications by the owner

3.3.3 FCA
If the issuer is in insolvency, the owner must send to the FCA the notifications set out at RCB 3.3.1 D and RCB 3.3.2A D by the same dates as the dates the notifications under those directions are due.

Due diligence

3.3.4 FCA
The issuer or the owner, as the case may be, should carry out, or make arrangements to carry out, appropriate due diligence to check that the analysis in the information provided to the FCA is correct.

Addition or removal of assets from the asset pool

3.3.5 FCA
If the issuer or the owner (as the case may be) proposes to add or remove assets to or from the asset pool which change the level of over collateralisation by 5% or more, it must notify the FCA using the form set out in RCB 3 Annex 2 D (asset notification form) at least 5 business days prior to the proposed transfer, giving expected details of the size and composition of the transfer.
3.4 Covered Bond issuance notifications

The **issuer** must inform the **FCA** of the information relating to bond issuances from a **regulated covered bond** in the form set out in **RCB 3 Annex 4 D** (indicative terms form) at least 3 business days before the date of issuance.

3.4.1 **FCA**

On the date of issuance, the issuer must send to the **FCA**:

1. the information in the form set out in **RCB 3 Annex 5 D** (issuance form);
2. the information in the form set out in **RCB 3 Annex 3 D** (asset and liability profile form); and
3. the final terms of the **regulated covered bonds** or equivalent issuance documents setting out the terms of the **regulated covered bonds** and signed copies of swap documents.
### Notifications of change of owner

**Regulation 25 of the RCB Regulations** (change of owner) sets out the procedures which apply where a *regulated covered bond* has been issued and the *owner* of the *relevant asset pool* proposes to transfer ownership to another person.

**3.5.1 FCA**

If an *owner* proposes to transfer the *asset pool* to a new *owner* it must provide the FCA as a minimum with the following information in writing at least three *months* before the proposed transfer date:

1. name, address and contact details of the proposed new *owner*;
2. proposed transfer date and reasons for the transfer;
3. an explanation of how the proposed new *owner* will comply with the requirements imposed on it by the *RCB Regulations* and *RCB*; and
4. confirmation that the existing *owner* and the proposed new *owner* have obtained appropriate advice in relation to the proposed transfer, and details of such advice.

### Notifications of material changes

**Regulation 20 of the RCB Regulations** (material changes to the regulated covered bond) sets out the procedures which apply where an *issuer* proposes to make a material change to the contractual terms of the bond.

**3.5.3 FCA**

If an *issuer* proposes to make a material change to the contractual terms of a *regulated covered bond*, it must inform the FCA of the following information to the FCA at least 3 months before the proposed date of the change:

1. details of the proposed change including proposed date of change and the reasons for it;
2. an assessment of the impact of the change on the ability of the *issuer* and *owner* to continue to comply with their requirements under the *RCB Regulations* and *RCB*; and
3. confirmation that the *issuer* has obtained appropriate advice in relation to the proposed change and details of such advice.
The FCA will regard as material any change that may affect the ability of the issuer or the owner to continue to comply with the requirements made on them under the RCB Regulations and RCB.

Notifications to the FCA if asset pool is not capable or not likely to be capable of covering claims and of other matters

The issuer or the owner, as the case may be, must notify the FCA immediately, in writing by e-mail or hand-delivered letter, if Regulation 18(2), or 24(1)(c) of the RCB Regulations (obligation to inform FCA if asset pool not capable, or not likely to be capable of covering claims) is triggered.

The issuer or the owner, as the case may be, must notify the FCA immediately in writing by e-mail, or hand-delivered letter, if requirements relating to the relevant regulated covered bond under the RCB Regulations or RCB are, or are likely to be, materially breached, or of any other matter which the FCA should be made aware of.

The issuer or the owner, as the case may be, should include details of proposals to rectify the breach at the time they notify, or as soon as practicable after that time.

Notification of cancellation

The issuer must notify the FCA if it proposes to cancel in full or in part a regulated covered bond or programme at least 3 business days before the cancellation will take effect.

The issuer must send to the FCA the information in the form set out in RCB 3 Annex 6 D and an updated asset and liability profile form (RCB 3 Annex 3 D) on the date of cancellation of the regulated covered bond or programme.

Publication of asset pool information and transaction documents

The issuer must publish the asset notification form sent to the FCA under RCB 3.3.1 D.

The issuer must publish the information relating to the individual loan assets in the asset pool in the form set out in RCB 3 Annex 7A D (loan level disclosure) within one month of the end of each quarter following any issuance of regulated covered bonds after 1 January 2013.

The publication of the information and documents required under RCB 3.5.11 D, RCB 3.5.12 D and RCB 3.5.13 D should be made on a subscription-only, secure, password-protected website. This website should also contain a link to the latest published prospectus relating to the relevant regulated covered bond or programme.

(1) The transaction documents published under RCB 3.5.13 D should include the asset sale agreement, the servicing agreements, the administration and cash management agreements, the trust deed, the security deed, the agency agreements, the account bank agreement, the guaranteed investment contract, the master definitions agreement, intercompany loan agreements, the LLP deed, the asset
monitor agreement, the swap documentation, the final terms of the regulated covered bonds or equivalent issuance documents setting out the terms of the regulated covered bonds and, if applicable, liquidity facility agreements.

(2) Where the transaction documents contain sensitive commercial terms (such as the up-front costs associated with a swap), the issuer may redact these terms for the purposes of publication, provided the relevant transaction documents are non-public and the relevant redacted terms refer to sunk costs which do not impact the transaction cash flows.

If the issuer is in insolvency, the owner must publish the information set out at ■ RCB 3.5.11 D and ■ RCB 3.5.12 D in accordance with those directions.
3.6 Fees and other matters

Administrative fee

If an issuer or owner does not provide the notifications to the FCA required by directions made under this chapter by the date specified, then that issuer or owner must pay to the FCA an administrative fee of £250.

Further information and direction

The FCA’s exercise of its powers under Part 1 paragraph 3 of the Schedule to the RCB Regulations (power to require information) may include requesting information on the reviews undertaken or advice given by accountants and where appropriate lawyers.

The form and content of the notifications in this chapter are a matter for direction by the FCA which will determine any additional information and documentation required on a case-by-case basis.

Review of legal advice

The issuer or the owner, as the case may be, should review legal advice as necessary. For example, advice should be reviewed if a relevant statutory provision is amended or where a new decision or judgment of a court might have a bearing on the conclusions reached which is material to the issuer’s or owner’s compliance with the requirements of the RCB Regulations or the RCB.

Method of sending forms and information to FCA

Unless otherwise stated, the issuer or the owner, as the case may be, must send the relevant forms and information to the FCA’s address marked for the attention of the “Covered Bonds Team, Capital Markets Sector” by any of the following methods:

1. post; or
2. leaving it at the FCA’s address and obtaining a time-stamped receipt; or
3. e-mail to rcb@fsa.gov.uk.
Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook

This annex consists only of one or more forms. Forms are to be found through the following address:

Annual confirmation of compliance with the RCB Regulations and the RCB Sourcebook - FSA/docs/rcb/rcb_chapter3_annex1d_20130401.pdf
Asset pool notification form

This annex consists only of one or more forms. Forms are to be found through the following address:

Asset pool notification form - FSA/docs/rcb/rcb_chapter3_annex2d
**Asset and liability profile form**

This annex consists only of one or more forms. Forms are to be found through the following address:

*Asset and liability profile form* - FSA/docs/rcb/rcb_chapter3_annex3d
Indicative terms form

This annex consists only of one or more forms. Forms are to be found through the following address:

*Indicative terms form*- FSA/docs/rcb/rcb_chapter3_annex4d
This annex consists only of one or more forms. Forms are to be found through the following address:

Issuance form- FSA/docs/rcb/rcb_chapter3_annex5d
Cancellation form

This annex consists only of one or more forms. Forms are to be found through the following address:

Cancellation form - FSA/docs/rcb/rcb_chapter3_annex6d
Loan level disclosure form

FCA

This annex consists only of one or more forms. Forms are to be found through the following address:

Loan level disclosure form- FSA/docs/rcb/rcb_chapter3_annex7ad
Guidance on loan level disclosure form

This annex consists only of one or more forms. Forms are to be found through the following address:

Guidance on loan level disclosure form- FSA/docs/rcb/rcb_chapter3_annex7bg_20130101.xls
Chapter 4

Enforcement powers
4.1 Application and purpose

Application

This chapter contains guidance for issuers, and owners and other persons subject to the RCB Regulations.

Purpose

The purpose of this chapter is to give guidance on the FCA’s approach to the use of its enforcement powers under the RCB Regulations and to set out the FCA’s policy on the imposition and amount of financial penalties.
4.2 Enforcement powers and penalties

The FSA’s enforcement powers

The FCA’s approach to the exercise of its enforcement powers will be consistent with its approach in DEPP and EG so far as appropriate.

The FCA’s exercise of its powers under the RCB Regulations is without prejudice to the use of its powers under the Act or under other legislation.

4.2.3 FCA

(1) When deciding whether to take enforcement action under Part 7 of the RCB Regulations, and what form that enforcement action should take, the FCA will consider all relevant factors, including:

(a) the relevant factors on decisions to take action set out in DEPP 6.2.1 G;

(b) whether any contractual or other arrangements agreed between the parties can be used effectively to address any perceived failure under the RCB Regulations; and

(c) the interests of investors in the relevant regulated covered bond.

(2) The FCA does not normally expect to use its enforcement powers where the issuer or the owner are in the process of rectifying non-compliance and where they have taken account of the views and interests of investors in the regulated covered bond. This is without prejudice to the FCA’s use of its enforcement powers as a result of its consideration of all relevant factors, as set out in RCB 4.2.3 G (1).

Financial penalties

The FCA’s policy on imposing financial penalties (including the amount of any such penalties) under the RCB Regulations will be consistent with the policy as set out in DEPP and EG with appropriate modifications.

4.2.5 FCA

When considering whether to impose a financial penalty, the amount of penalty, and whether to impose the penalty on the issuer or the owner, the FCA will have regard, where relevant, to:

(1) the statement on determining the appropriate level of a financial penalty set out in DEPP 6.5 to DEPP 6.5D;
(2) the particular arrangements between the issuer and the owner;

(3) the likely impact of the penalty on the interests of investors in a regulated covered bond; and

(4) the conduct of the issuer or the owner.
Section 5.2: [Deleted]
Chapter 6

Warning and decision notices
6.1 Application and purpose

Application

This chapter contains guidance for issuers and owners and other persons subject to the RCB Regulations.

Purpose

The purpose of this chapter is to set out the FCA’s statement of the procedure which it proposes to follow on giving warning notices and decision notices in relation to regulated covered bonds.
6.2 Policy on decision and warning notices

**Decision and warning notices**

When making a decision on an application for registration under the RCB Regulations, or in relation to material changes to the contractual terms of the regulated covered bond, or in relation to a change of owner, or when seeking to use direction, revocation or penalty powers, the RCB Regulations require the FCA to give the subject of the intended action a warning notice and a decision notice. The recipient of a warning notice has the right to make representations to the decision maker, and may refer the decision to give a decision notice to the Tribunal.

**Regulation 44 of the RCB Regulations** (Warning notices and decision notices) applies Part XXVI of the Act (Notices) in respect of notices that we give under the RCB Regulations. This means that the provisions of section 393 of the Act (Third party rights) and section 394 of the Act (Access to Authority material) apply to penalty procedures under the RCB Regulations and that, if the matter is not referred to the Tribunal, then upon taking the action to which a decision notice relates, the FCA will issue the subject of the decision notice a final notice. The FCA is required to publish such details about the matter to which a final notice relates as it considers appropriate.

**FCA decision maker**

6.2.3 **DEPP 2 Annex 1 G** identifies the relevant decision maker in relation to warning notices and decision notices issued by the FCA under the RCB Regulations.

6.2.4 Decisions on applications for registration, in relation to material changes to contractual terms of the regulated covered bond, or in relation to a change of owner, or decisions to issue a direction under the RCB Regulations or to revoke an issuer’s registration, will be taken under executive procedures following the process set out in **DEPP 4**.

6.2.5 Decisions to impose a financial penalty under regulation 34 of the RCB Regulations will be taken by the RDC under the procedure set out in **DEPP 3.2** or, where relevant, **DEPP 3.3**.
Regulated Covered Bonds

Schedule 1
Record keeping requirements

(1) The aim of the guidance in the following table is to give the reader a quick overall view of the relevant record keeping requirements in this sourcebook.

(2) Regulation 17(2)(a) (general requirements on issuer in relation to the asset pool) and Regulation 24(1)(a)(i) (requirements on owner in relation to the asset pool) require a record to be kept of each asset in the asset pool.

(3) It is not a complete statement of those requirements and should not be relied on as if it were.

(4) There are no other record-keeping requirements in RCB.

(5) Table

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Subject of record</th>
<th>Contents of record</th>
<th>When record must be made</th>
<th>Retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>n/a</td>
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<td>n/a</td>
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</tr>
</tbody>
</table>
### Regulated Covered Bonds

#### Schedule 2

**Notification requirements**

1. The aim of the guidance in the following table is to give the reader a quick overall view of the relevant notification and reporting requirements.

2. It is not a complete statement of those requirements and should not be relied on as if it were.

3. Table

<table>
<thead>
<tr>
<th>Handbook reference</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>RCB 3.2.1 D</td>
<td>Confirmation of compliance by issuer.</td>
<td>Senior manager to confirm compliance with Regulations 16 and 17 of the RCB Regulations. Use Form RCB 2 Ann 1D.</td>
<td>The earlier of a date which the issuer selects, or 12 months from the registration date, then annually after that.</td>
<td>One month after the relevant confirmation date.</td>
</tr>
<tr>
<td>RCB 3.3.1 D and RCB 3.3.3 D</td>
<td>Information relating to the asset pool and information relating to the regulated covered bonds issued under the programme</td>
<td>Information on various attributes of the asset pool and issued regulated covered bonds. Use Forms RCB 3 Ann 2D and RCB 3 Annex 3 D.</td>
<td>Monthly (in relation to the information in Form RCB 3 Annex 2 D) or quarterly (in relation to the information in Form RCB 3 Annex 3 D) following registration date.</td>
<td>One month after the end of the relevant month or quarter.</td>
</tr>
<tr>
<td>RCB 3.2.10 D</td>
<td>Confirmation of compliance by owner</td>
<td>Owner to confirm compliance with Regulations 16 and 17 of the RCB Regulations. Use Form RCB 2 Ann 1D.</td>
<td>(1) when the issuer goes into insolvency (2) the anniversary date of the date the issuer sent annual confirmations</td>
<td>(1) Within one month of issuer’s insolvency. (2) One month after the relevant confirmation date.</td>
</tr>
<tr>
<td>RCB 3.3.2A D</td>
<td>Information about loans relating to the asset pool</td>
<td>Loan-by-loan level data relating to the asset pool. Use Form RCB 3 Annex 7A D.</td>
<td>End of each quarter following registration date following any issuance of regulated covered bonds after 1 January 2013.</td>
<td>One month after the end of the relevant quarter.</td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Matter to be notified</td>
<td>Contents of notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
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<tr>
<td>---------------------</td>
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<td>------------------------------------------------------------------------------------------</td>
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<td>------------------------------------------</td>
</tr>
<tr>
<td>RCB 3.3.5 D</td>
<td>Addition or removal of assets to or from the asset pool</td>
<td>Details of the size and composition of the transfer. Use Form RCB 3 Annex 2 D.</td>
<td>Addition or removal of assets from the asset pool which change the over-collateralisation level by 5% or more.</td>
<td>5 business days before the proposed transfer.</td>
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<td>RCB 3.4.1 D</td>
<td>Covered bond issuance</td>
<td>Information on the covered bond issuance.</td>
<td>Issuance of a regulated covered bond</td>
<td>3 business days before date of issuance</td>
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<tr>
<td>RCB 3.4.2 D</td>
<td>Covered bond issuance</td>
<td>Information on the covered bond issuance. Use Form RCB 3 Annex 4 D.</td>
<td>Issuance of a regulated covered bond</td>
<td>On date of issuance</td>
</tr>
<tr>
<td>RCB 3.5.2 D</td>
<td>Change of owner</td>
<td>At least:</td>
<td>Proposal to change owner</td>
<td>At least 3 months before proposed date of transfer</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1) name, address and contact details of proposed new owner.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) proposed transfer date and reasons for transfer</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(3) explanation of how proposed new owner will comply with requirements in RCB Regulations and in RCB.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(4) confirmation that existing owner and proposed new owner have obtained appropriate advice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RCB 3.5.4 D</td>
<td>Material changes being any change that may affect the ability of the issuer or the owner to continue to comply with the requirements made on them under the RCB Regulations and RCB</td>
<td>At least:</td>
<td>Proposal to make material change</td>
<td>At least 3 months before proposed date of change</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(1) details of the proposed change including proposed date of change and the reasons for it</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>(2) an assessment of the impact of the change on the ability of the issuer and owner to continue to comply with the requirements in RCB Regulations and in RCB.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Handbook reference</td>
<td>Matter to be notified</td>
<td>Contents of notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------</td>
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<td>---------------</td>
<td>--------------</td>
</tr>
</tbody>
</table>
| RCB 3.5.6 D        | Capability of asset pool to meet bondholder claims | (3) confirmation that issuer has obtained appropriate advice  
(1) fact that the asset pool is not capable or not likely to be capable of covering claims.  
(2) proposals to rectify the breach | (1) and (2) As soon as Regulations 18(2) or 24(1)(c) of the RCB Regulations is triggered | (1) Immediately  
(2) upon notification of breach or as soon as practicable after that time. |
| RCB 3.5.7 D        | (1) That the requirements in the RCB Regulations and RCB are, or are likely to be materially breached, or  
(2) of any other matter which the FSA should be made aware of. | (1) fact of breach or likely breach  
(2) details of matter | Material breach, or likely material breach. As soon as issuer or owner becomes aware of matter. | Immediately |
| RCB 3.5.9 D        | Cancellation | Notice of cancellation of a regulated covered bond or programme | Proposal to cancel a regulated covered bond or programme in part or in full. | 3 business days before cancellation will take effect. |
| RCB 3.5.10 D       | Cancellation | Information on the cancellation of a regulated covered bond or programme and updated asset and liability profile form. Use Forms RCB 3 Annex 6 D and RCB 3 Annex 3 D. | Cancellation of a regulated covered bond or programme. | On date of cancellation of the regulated covered bond or programme. |
Regulated Covered Bonds

Schedule 3
Fees and other requirement payments

FCA

The provisions relating to fees are set out in FEES 3.2.7 R(zm) (application fee), FEES 3.2.7 R(zn) (material change fee) and in RCB 3.6.1 R (administrative fee).
Regulated Covered Bonds

Schedule 4
Powers exercised

Sch 4.1 G
The following powers and related provisions in the RCB Regulations have been exercised by the FSA to make the rules and directions in RCB:

- Regulation 8 (Applications for registration)
- Regulation 9 (Applications for admission to the register of issuers)
- Regulation 18 (Notification requirements)
- Regulation 20 (Material changes to the regulated covered bond)
- Regulation 24 (Requirements relating to the asset pool)
- Regulation 25 (Change of owner)
- Regulation 36 (financial penalties policy statement)
- Regulation 46, and paragraph 5 (fees) of the Schedule (Modifications to primary and secondary legislation)

Sch 4.2 G
The following power under the Act has been exercised by the FSA to make the rules in RCB:

- Section 138 (General rule-making power)

Sch 4.3 G
The following power in the RCB Regulations has been exercised by the FSA to give the guidance in RCB:

- Regulation 42 (Guidance)
Regulated Covered Bonds

Schedule 5
Rights of action for damages

FCA
Not applicable
Regulated Covered Bonds

Schedule 6
Rules that can be waived

G
FCA
Not applicable
Recognised Investment Exchanges
Recognised Investment Exchanges

REC 1  Introduction
   1.1  Application
   1.2  Purpose, status and quotations

REC 2  Recognition requirements
   2.1  Introduction
   2.2  Method of satisfying the recognition requirements
   2.3  Financial resources
   2.4  Suitability
   2.5  Systems and controls and conflicts
   2.5A  Guidance on Public Interest Disclosure Act: Whistleblowing
   2.6  General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading
   2.7  Access to facilities
   2.8  Settlement and clearing facilitation services
   2.9  Transaction recording
   2.10  Financial crime and market abuse
   2.11  Custody
   2.12  Availability of relevant information and admission of financial instruments to trading (UK RIEs only)
   2.13  Promotion and maintenance of standards
   2.14  Rules and consultation
   2.15  Discipline
   2.16  Complaints
   2.16A  Operation of a multilateral trading facility
   2.17  Recognition requirements relating to the default rules of UK RIEs

REC 2A  Recognised Auction Platforms
   2A.1  Introduction
   2A.2  Method of satisfying the RAP recognition requirements
   2A.3  Guidance on RAP recognition requirements
   2A.4  Power and procedure for RAP penalties and censures

REC 3  Notification rules for UK recognised bodies
   3.1  Application and purpose
   3.2  Form and method of notification
   3.3  Waivers
   3.4  Key individuals and internal organisation
   3.5  Disciplinary action and events relating to key individuals
### 3. Constitution and governance
- 3.6 Constitution and governance
- 3.7 Auditors
- 3.8 Financial and other information
- 3.9 Fees and incentive schemes
- 3.10 Complaints
- 3.11 Insolvency events
- 3.12 Legal proceedings
- 3.13 Delegation of relevant functions
- 3.14 Products, services and normal hours of operation
- 3.14A Operation of a regulated market or MTF
- 3.15 Suspension of services and inability to operate facilities
- 3.16 Information technology systems
- 3.17 Inability to discharge regulatory functions
- 3.18 Membership
- 3.19 Investigations
- 3.20 Disciplinary action relating to members
- 3.21 Criminal offences and civil prohibitions
- 3.22 Restriction of, or instruction to close out, open positions
- 3.23 Default
- 3.24 Transfers of ownership
- 3.25 Significant breaches of rules and disorderly trading conditions
- 3.26 Proposals to make regulatory provision

### 4. Supervision
- 4.1 Application and purpose
- 4.2 The supervisory relationship with UK recognised bodies
- 4.2A Publication of information by UK RIEs and RAPs
- 4.2B Exercise of passport rights by a UK RIE
- 4.2C Control over a UK RIE
- 4.2D Suspension and removal of financial instruments from trading
- 4.2E Information: compliance of UK recognised bodies with EU requirements
- 4.2F Information gathering power on FCA’s own initiative
- 4.2G Reports by skilled persons
- 4.3 Risk assessments for UK recognised bodies
- 4.4 Complaints
- 4.5 FCA supervision of action by UK RIEs under their default rules
- 4.6 The section 296 power to give directions
- 4.6A The section 192C power to direct qualifying parent undertakings
- 4.7 The section 297 power to revoke recognition
- 4.8 The section 298 procedure
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### 5. Applications for Recognition (UK recognised bodies)
- 5.1 Introduction and legal background
- 5.2 Application process

### 6. Overseas Investment Exchanges
6.1 Introduction and legal background
6.2 Applications
6.3 Recognition requirements
6.4 [Deleted]
6.5 FCA decision on recognition
6.6 Supervision
6.7 Notification rules for overseas recognised bodies
6.8 Powers to supervise

REC 6A EEA market operators in the United Kingdom
6A.1 Exercise of passport rights by EEA market operator
6A.2 Removal of passport rights from EEA market operator

REC 7 Fees
7.1 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1, 2, 3 and 4]
7.2 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1, 2, 3 and 4]
7.3 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1, 2, 3 and 4]
7 Annex 1 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 4 Annex 6R]
7 Annex 2 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 3 Annex 3R]

Transitional Provisions and Schedules
TP 1 Transitional provisions
Sch 1 Record keeping requirements
Sch 2 Notification requirements
Sch 3 [Deleted]
Sch 4 [Deleted]
Sch 5 Rights of action for damages
Sch 6 Rules that can be waived
Chapter 1

Introduction
1.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See [web address tbc]

1.1.1 FCA

The rules and guidance in this sourcebook apply to recognised bodies and to applicants for recognition as RIEs under Part XVIII of the Act (Recognised Investment Exchanges and Clearing Houses) and (as RAPs) under the RAP regulations.

1.1.1A FCA

The guidance in ■ REC 6A applies to EEA market operators exercising passporting rights in the United Kingdom.

1.1.2 FCA

(1) UK RIEs are exempt persons under section 285 of the Act (Exemption for recognised investment exchanges and clearing houses).

(2) UK RIEs must satisfy recognition requirements prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the Recognition Requirements Regulations. UK RIEs must also satisfy the MiFID implementing requirements in the MiFID Regulation. RAPs must satisfy the recognition requirements prescribed by the Treasury in the RAP regulations, under the auction regulation and must also be UK RIEs and so are subject to requirements under the MiFID Regulation. ROIEs must satisfy recognition requirements laid down in section 292 of the Act (Overseas investment exchanges and overseas clearing houses).

(3) UK RIEs must also comply with notification requirements in, and with notification rules made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the Act.

1.1.3 FCA

(1) The recognition requirements for UK recognised bodies and the MiFID implementing requirements are set out, with guidance, in ■ REC 2. The RAP recognition requirements (other than requirements under the auction regulation which are not reproduced in REC) are set out, with guidance, in ■ REC 2A.

(2) The notification rules for UK recognised bodies are set out in ■ REC 3 together with guidance on those rules.
(3) Guidance on the FCA’s approach to the supervision of recognised bodies is given in REC 4.

(4) Guidance for applicants (and potential applicants) for UK recognised body status is given in REC 5.

(5) The recognition requirements, notification rules, and guidance for ROIEs and guidance for applicants (and potential applicants) for ROIE status are set out in REC 6.

(5A) Guidance for EEA market operators exercising their passporting rights in the United Kingdom is set out in REC 6A.

(6) The fees rules for recognised bodies and applicants are set out in FEES 1, 2, 3 and 4.
1.2 Purpose, status and quotations

Purpose

The purpose of the guidance (other than in ■ REC 6A) in this sourcebook is to give information on the recognised body requirements. The purpose of the guidance in ■ REC 6A is to give EEA market operators information about their passporting rights in the United Kingdom. Explanations of the purposes of the rules in this sourcebook are given in the chapters concerned.

Status

(1) Most of the provisions in this sourcebook are marked with a G (to indicate guidance) or an R (to indicate a rule). Quotations from UK statute or statutory instruments are marked with the letters "UK" unless they form part of a piece of guidance. Quotations from the directly applicable MiFID Regulation are marked with the letters "EU". For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.

(2) Where the guidance states that the FCA may have regard to any factor in assessing or determining whether a recognised body requirement is satisfied, it means that the FCA will take that factor into account so far as it is relevant.

(3) In determining whether a recognised body satisfies the recognised body requirements, the FCA will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the guidance.

Quotations

(1) This sourcebook contains quotations from the Act, the Recognition Requirements Regulations, the RAP regulations and the Companies Act 1989 and the MiFID Regulation and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.

(2) The additions and substitutions are enclosed in square brackets ([ ]). The omission of words within a quotation is indicated by three dots (...).

(3) Any words in these quotations which have the same meaning as Handbook defined terms are shown in italics and their definitions may be found in the Glossary.
(4) As these quotations contain provisions which impose obligations, they are printed in bold type. The use of bold type is not intended to indicate that these quotations are rules made by the FCA.

(5) None of the editorial changes made by the FCA in these quotations can supersede or alter the meaning of the provision concerned.
Chapter 2

Recognition requirements
2.1 Introduction

This chapter contains the recognition requirements for UK RIEs (other than RAPs) and sets out guidance on those requirements. Except for REC 2.5A, references to recognised body or UK recognised bodies in the rest of this chapter shall be read as referring to UK RIEs. This chapter also contains the MiFID implementing requirements for UK RIEs.

2.1.1A FCA

Guidance on the RAP recognition requirements which apply to RAPs is set out in REC 2A (Recognised Auction Platforms). Guidance on the recognition requirements for ROIEs is set out in REC 6 (Overseas Investment Exchanges).

2.1.2 FCA

These recognition requirements must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. In addition the MiFID implementing requirements must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. The same standards apply both on initial recognition and throughout the period recognised body status is held. The term UK RIE in the guidance should be taken, therefore, to refer also to an applicant when appropriate.

2.1.3 FCA

(1) The paragraphs in the Schedule to the Recognition Requirements Regulations are grouped in this sourcebook in sections which give guidance on the same subject for UK RIEs.

(2) The table in REC 2.1.4 G indicates in which section each of those paragraphs (and the associated guidance) can be found.

2.1.4 FCA

Table Location of recognition requirements and guidance

<table>
<thead>
<tr>
<th>Recognition Requirements Regulations</th>
<th>Subject</th>
<th>Section in REC 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 6</td>
<td>Method of satisfying recognition requirements</td>
<td>2.2</td>
</tr>
<tr>
<td>Part I of the Schedule</td>
<td>UK RIE recognition requirements</td>
<td></td>
</tr>
<tr>
<td>Paragraph 1</td>
<td>Financial resources</td>
<td>2.3</td>
</tr>
<tr>
<td>Paragraph 2</td>
<td>Suitability</td>
<td>2.4</td>
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2.1.4
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<th>Recognition Requirements Regulations</th>
<th>Subject</th>
<th>Section in REC 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paragraph 3</td>
<td>Systems and controls</td>
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</tr>
<tr>
<td>Paragraphs 4(1) and 4(2)(aa)</td>
<td>General safeguards for investors</td>
<td>2.6</td>
</tr>
<tr>
<td>Paragraph 4(2)(a)</td>
<td>Access to facilities</td>
<td>2.7</td>
</tr>
<tr>
<td>Paragraph 4(2)(b)</td>
<td>Proper markets</td>
<td>2.12</td>
</tr>
<tr>
<td>Paragraph 4(2)(c)</td>
<td>Availability of relevant information</td>
<td>2.12</td>
</tr>
<tr>
<td>Paragraph 4(2)(d)</td>
<td>Settlement</td>
<td>2.8</td>
</tr>
<tr>
<td>Paragraph 4(2)(e)</td>
<td>Transaction recording</td>
<td>2.9</td>
</tr>
<tr>
<td>Paragraph 4(2)(ea)</td>
<td>Conflicts</td>
<td>2.5</td>
</tr>
<tr>
<td>Paragraph 4(2)(f)</td>
<td>Financial crime and market abuse</td>
<td>2.10</td>
</tr>
<tr>
<td>Paragraph 4(2)(g)</td>
<td>Custody</td>
<td>2.11</td>
</tr>
<tr>
<td>Paragraph 4(3)</td>
<td>Definition of relevant information</td>
<td>2.12</td>
</tr>
<tr>
<td>Paragraph 4A</td>
<td>Provision of pre-trade information about share trading</td>
<td>2.6</td>
</tr>
<tr>
<td>Paragraph 4B</td>
<td>Provision of post-trade information about share trading</td>
<td>2.6</td>
</tr>
<tr>
<td>Paragraph 6</td>
<td>Promotion and maintenance of standards</td>
<td>2.13</td>
</tr>
<tr>
<td>Paragraph 7</td>
<td>Rules and consultation</td>
<td>2.14</td>
</tr>
<tr>
<td>Paragraph 7A</td>
<td>Admission of financial instruments to trading</td>
<td>2.12</td>
</tr>
<tr>
<td>Paragraph 7B and 7C</td>
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<td>2.7</td>
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<td>Paragraph 7D</td>
<td>Settlement</td>
<td>2.8</td>
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<td>Paragraph 7E</td>
<td>Suspension and removal of financial instruments from trading</td>
<td>2.6</td>
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<td>Paragraph 8</td>
<td>Discipline</td>
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<tr>
<td>Part II of the Schedule</td>
<td>UK RIE default rules in respect of market contracts</td>
<td>2.17</td>
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</tbody>
</table>

Recitals and articles from the *MiFID Regulation* (and the associated guidance) relevant to market transparency are set out in REC 2.6. Articles from the *MiFID Regulation* relevant to admission to trading are set out in REC 2.12.
2.2 Method of satisfying the recognition requirements

Recognition Requirements Regulations, Regulation 6

(1) In considering whether a [UK recognised body] or applicant satisfies recognition requirements applying to it under these [Recognition Requirements Regulations], the [FCA] may take into account all relevant circumstances including the constitution of the person concerned and its regulatory provisions within the meaning of section 300E of the Act.

(2) Without prejudice to the generality of paragraph (1), a [UK recognised body] or applicant may satisfy recognition requirements applying to it under these [Recognition Requirements Regulations] by making arrangements for functions to be performed on its behalf by any other person.

(3) Where a [UK recognised body] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by the Act on the [UK recognised body] or applicant to satisfy recognition requirements applying to it under these [Recognition Requirements Regulations], but it is in addition a recognition requirement applying to the [UK recognised body] or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them.

Relevant circumstances

The FCA will usually expect:

(1) the constitution, regulatory provisions and practices of the UK recognised body or applicant;

(2) the nature (including complexity, diversity and risk) and scale of the UK recognised body's or applicant's business;

(3) the size and nature of the market which is supported by the UK recognised body's or applicant's facilities;

(4) the nature and status of the types of investor who use the UK recognised body's or applicant's facilities or have an interest in the market supported by the UK recognised body's or applicant's facilities; and

(5) the nature and scale of the risks to the statutory objectives associated with the matters described in (1) to (4);
to be among the relevant circumstances which it will take into account in considering whether a UK recognised body or applicant satisfies the recognition requirements.

**Outsourcing**

It is the UK recognised body’s responsibility to demonstrate to the FCA that a person who performs a function on behalf of the UK recognised body is fit and proper and able and willing to perform that function. The recognition requirement referred to in Regulation 6(3) applies to the UK recognised body and not to any person who performs any function on its behalf. In this context, for a person to be “fit and proper” does not necessarily imply that he is an authorised person, or qualified to be so, or that the required standard is the same as that required either for authorised persons or recognised bodies.

If a UK recognised body makes arrangements for functions to be performed on its behalf by persons who are authorised persons or recognised bodies, this does not alter its obligations under Regulation 6.

If a person who performs a function on behalf of a UK recognised body is himself carrying on a regulated activity in the United Kingdom, he will, unless he is a person to whom the general prohibition does not apply, need to be either an authorised person or an exempt person. The person to whom a function is delegated is not covered by the UK recognised body's exemption.

In determining whether the UK recognised body meets the recognition requirement in Regulation 6(3), the FCA may have regard to whether that body has ensured that the person who performs that function on its behalf:

1. has sufficient resources to be able to perform the function (after allowing for any other activities);
2. has adequate systems and controls to manage that function and to report on its performance to the UK recognised body;
3. is managed by persons of sufficient skill, competence and integrity;
4. understands the nature of the function it performs on behalf of the UK recognised body and its significance for the UK recognised body’s ability to satisfy the recognition requirements and other obligations in or under the Act; and
5. undertakes to perform that function in such a way as to enable the UK recognised body to continue to satisfy the recognition requirements and other obligations in or under the Act.

In determining whether a UK recognised body continues to satisfy the recognition requirements where it has made arrangements for any function to be performed on its behalf by any person, the FCA may have regard, in addition to any of the matters described in the appropriate section of this chapter, to the arrangements made to exercise control over the performance of the function, including:

1. the contracts (and other relevant documents) between the UK recognised body and the person who performs the delegated function;
(2) the arrangements made to monitor the performance of that function; and

(3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.
2.3 Financial resources

Schedule to the Recognition Requirements Regulations, Paragraph 1

1) The [UK RIE] must have financial resources sufficient for the proper performance of its [relevant functions] as a [UK RIE].

2) In considering whether this requirement is satisfied, the [FCA] must (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any person, and any activity carried on by the [UK RIE], whether or not it is an exempt activity.

2.3.2 [deleted]

2.3.3 In determining whether a UK recognised body has financial resources sufficient for the proper performance of its relevant functions, the FCA may have regard to:

1) the operational and other risks to which the UK recognised body is exposed;

2) if the UK recognised body guarantees the performance of transactions in specified investments, the counterparty and market risks to which it is exposed in that capacity;

3) the amount and composition of the UK recognised body's capital;

4) the amount and composition of the UK recognised body's liquid financial assets;

5) the amount and composition of the UK recognised body's other financial resources (such as insurance policies and guarantees, where appropriate);

6) the financial benefits, liabilities, risks and exposures arising from the UK recognised body's connection with any person, including but not limited to, its connection with:

   a) any undertaking in the same group as the UK recognised body;
   
   b) any other person with a significant shareholding or stake in the UK recognised body;
   
   c) any other person with whom the UK recognised body has made a significant investment whether in the form of equity, debt, or by means of any guarantee or other form of commitment;
   
   d) any person with whom it has a significant contractual relationship.
(7) the nature and extent of the transactions concluded on the UK RIE.

**Accounting information and standards**

The FCA will usually rely on a UK recognised body's published and internal management accounts and financial projections, provided that those accounts and projections are prepared in accordance with UK, US or international accounting standards.

**Counterparty and market risks: principles**

In assessing whether a UK recognised body has sufficient financial resources in relation to counterparty and market risks, the FCA may have regard to:

1. the amount and liquidity of its financial assets and the likely availability of liquid financial resources to the UK recognised body during periods of major market turbulence or other periods of major stress for the UK financial system; and
2. the nature and scale of the UK recognised body's exposures to counterparty and market risks and, where relevant, the counterparties to which it is exposed.

**Operational and other risks: principles**

In assessing whether a UK recognised body has sufficient financial resources in relation to operational and other risks, the FCA may have regard to:

1. to enable the UK recognised body to continue carrying on properly the regulated activities that it expects to carry on; and
2. to ensure that it would be able to complete an orderly closure or transfer of its exempt activities without being prevented from doing so by insolvency or lack of available funds.

**Operational and other risks: components of calculation**

In considering whether a UK recognised body has sufficient financial resources in relation to operational and other risks, the FCA will normally have regard to two components: eligible financial resources and net capital.

**Operational and other risks: UK RIEs - the standard and risk-based approach**

1. The FCA considers that a UK RIE which at any time holds:
   a. eligible financial resources not less than the greater of:
The amount calculated under the standard approach; and

(ii) the amount calculated under the risk-based approach; and

(b) net capital not less than the amount of eligible financial resources determined under (1)(a);

will, at that time, have sufficient financial resources to meet the recognition requirement in respect of operational and other risks unless there are special circumstances indicating otherwise.

(2) The FCA would normally regard the amount calculated under REC 2.3.9G(1)(a)(i) to be a minimum amount of financial resources below which a UK RIE would be failing the recognition requirements. The FCA would expect a UK RIE to hold, in addition to this minimum amount, an amount constituting an operational risk buffer calculated in accordance with REC 2.3.22 G.

Operational and other risks: individual guidance

The FCA would expect to provide a UK recognised body with individual guidance on the amount of eligible financial resources which it considers would be sufficient for the UK recognised body to hold in respect of operational and other risks in order to satisfy the recognition requirements. In formulating its individual guidance, the FCA will ordinarily apply the approach described in REC 2.3.9G for UK RIEs.

Operational and other risks: eligible financial resources

For the purposes of REC 2.3, "eligible financial resources" should consist of liquid financial assets held on the balance sheet of a UK recognised body, including cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect.

Operational and other risks: net capital

For the purposes of REC 2.3, "net capital" should be in the form of equity. For this purpose, the FCA considers that common stock, retained earnings, disclosed reserves and other instruments classified as common equity tier one capital or additional tier one capital constitute equity. The FCA considers that, when calculating its net capital, a UK recognised body:

(1) should deduct holdings of its own securities, or those of any undertaking in the same group as the UK recognised body, together with any amount owed to the UK recognised body by an undertaking in its group under any loan or credit arrangement and any exposure arising under any guarantee, charge or contingent liability given in favour of such an undertaking or a creditor of such undertaking; and

(2) may include interim earnings that have been independently verified by its auditor.

Operational and other risks: eligible financial resources calculated under the standard approach

(1) Under the standard approach, the amount of eligible financial resources is equal to six months of operating costs.
(2) Under the standard approach, the FCA assumes liquid financial assets are needed to cover the costs that would be incurred during an orderly wind-down of the UK recognised body’s exempt activities, while continuing to satisfy all the recognition requirements and complying with any other obligations under the Act (including the obligations to pay periodic fees to the FCA).

(3) For the purposes of the standard approach, the FCA would normally expect the calculation of operating costs to be based on the UK recognised body’s most recent audited annual accounts, with six months of operating costs being equal to one half of the sum of all operating costs reflected in the audited annual accounts of the UK recognised body in the course of performing its functions during the year to which the accounts relate. In calculating the gross annual operating costs, the FCA would consider it reasonable to exclude non-cash costs (costs that do not involve an outflow of funds).

(4) The FCA considers it to be reasonable for a UK recognised body to adjust its operating expenditure calculation if, during the period since its last audited accounts were prepared, its level of operating expenditure has changed materially as documented by the current annual budget or forecast adopted by the UK recognised body’s governing body.

(5) The FCA considers that it is reasonable for a UK recognised body to adjust its operating expenditure to take account of arrangements between two or more undertakings in the same group, which are all subject to prudential regulation in the United Kingdom under which specified costs are shared or recharged among those undertakings and those costs would otherwise be double-counted in the calculation of their financial resources requirement.

Operational and other risks: eligible financial resources calculated under the risk-based approach (UK RIE’s only)

1. The risk-based approach is intended to ensure that sufficient financial resources are maintained at all times such that a UK RIE would not be prevented from implementing an orderly wind-down as a result of the financial impacts of stress events affecting its business or the markets in which it operates.

2. Under the risk-based approach the amount of eligible financial resources is calculated by adding together:

   (a) the amount estimated by the UK RIE to absorb the potential business losses that a business of its nature, scale and complexity might incur in stressed but plausible market conditions; and

   (b) the amount estimated by the UK RIE to effect an orderly closure.

In this context, a business loss arises where there is an increase in cost or reduction of revenue relative to a UK RIE’s expectation of its financial performance, such that a loss needs to be charged against its capital.

Operational and other risks: the risk-based assessment (UK RIEs only)

For the purposes of calculating the risk-based approach, the FCA would normally expect the UK RIE to provide the FCA with an annual financial risk assessment that identifies the risks to its business. As a financial risk assessment is likely to form an
integral part of the UK RIE’s management process and decision-making culture, the FCA would normally expect it to be approved by the UK RIE’s governing body.

The FCA would normally expect to use the financial risk assessment prepared by the UK RIE in the course of preparing individual guidance on the amount of financial resources that it considers is sufficient for a UK RIE to hold in order to satisfy the recognition requirements. The financial risk assessment would provide the basis for calculating the amount of eligible financial resources that should be held by the UK RIE under the risk-based approach.

The financial risk assessment should be based on a methodology which provides a reasonable estimate of the potential business losses which a UK RIE might incur in stressed but plausible market conditions. The FCA would expect a UK RIE to carry out a financial risk assessment at least once in every twelve-month period, or more frequently if there are material changes in the nature, scale or complexity of the UK RIE’s operations or its business plans that suggest such financial risk assessment no longer provides a reasonable estimate of its potential business losses. The FCA considers that it would be reasonable for a financial risk assessment to proceed in the following way:

(1) Step 1: the UK RIE would identify, in writing, the risks to which the business of the UK RIE is exposed and which could have a material adverse effect on its financial position, in the light of the nature, scale and complexity of its operations and its business plans. For this purpose, it would be reasonable to refer to the categorisation of risk used under the system of risk management adopted by the UK RIE in order to meet its responsibilities under the recognition requirements referred to in REC 2.5. That description would identify which risks are indemnified or transferred by the UK RIE and which are retained and accepted.

(2) Step 2: the UK RIE would conduct an assessment of the potential business losses that could arise in the event that the risks identified in accordance with step 1 were to materialise. For this purpose, it would be reasonable for a UK RIE to develop, and keep under review, a stress and scenario testing plan designed to simulate the effects of a pre-determined series of events, or sets of circumstances, that would be likely to occur following the crystallisation of one or more identified risks, taking into account the systems and controls in place to mitigate those risks. The stress and scenario testing plan would:

(a) cover a forward-looking period of at least one year;
(b) consider a suitable range of adverse events and sets of circumstances, of a defined severity and duration, which could occur in stressed but plausible market conditions;
(c) consider how a particular adverse event or set of circumstances could lead to or be correlated with other events;
(d) consider the potential for a particular adverse event or set of circumstances to affect multiple business lines;
(e) take into account realistic management actions to resolve such adverse events and circumstances; and
(f) where appropriate, involve sensitivity analysis showing the effects of changes to assumptions made about the impact of particular adverse events and circumstances.
In designing its stress and scenario testing plan, the FCA considers that it would be reasonable for a UK RIE to be guided by any risk-scoring methodology that it deploys for general risk-management purposes that might have application in evaluating the probability and impact of its risks.

(3) Step 3: the UK RIE would assess the eligible financial resources that it would need to hold to cover such potential business losses. Such eligible financial resources would enable the UK RIE to absorb any financial shocks attributable to such business risks were they to arise.

In carrying out this assessment, the FCA considers that it would be reasonable for a UK RIE to take account of any action which its senior management might plan on taking in response to a given stress event. For example, if the risk appetite of a UK RIE is such that it would not pursue recovery from a given stress event (and would instead initiate an orderly wind-down), the assessment of eligible financial resources needed in such circumstances might reasonably be limited to the costs of orderly wind-down from the point in time at which that decision would be likely to be made.

Where a UK RIE expects to be making a loss during the period covered by the financial risk assessment as a result of its anticipated business performance in normal market conditions, the business losses which are relevant to the calculation of the risk-based approach are those additional losses which the UK RIE would expect to incur in stressed but plausible market conditions.

(4) Step 4: the UK RIE would make an assessment of the cost of orderly closure. The FCA considers that an orderly closure should normally include an assessment of the impact of closure on the users of the markets operated by that UK RIE. For the purpose of this assessment, the FCA considers that it would be reasonable for a UK RIE to adopt the amount needed under the standard approach as its cost of orderly closure or to use its own method of calculation based on a scenario plan which comprehensively documents the costs that a UK RIE in its position might incur in order to fully implement an orderly wind-down.

(5) Step 5: the UK RIE would produce a proposal for the amount of eligible financial resources considered to be adequate to meet the risk-based approach. Such a proposal would be based on the sum of:

(a) the amount assessed to cover potential business losses in accordance with REC 2.3.17G (3); and

(b) an amount assessed to cover the cost of orderly closure in accordance with REC 2.3.17G (4).

(6) Step 6: the UK RIE would calculate the amount available as an operational risk buffer in accordance with REC 2.3.22 G. To the extent the amount available is insufficient to constitute an operational risk buffer, the UK RIE would include within its proposal the amount it would propose to hold (in addition to the sum of the amounts referred to in (5)(a) and (b)) for those purposes.
The FCA would normally expect a financial risk assessment to include a description of the methodology applied by the UK RIE to arrive at the proposal made in accordance with ■ REC 2.3.17G (5).

Where a UK RIE is a member of a group, the FCA would normally expect the annual risk assessment to be accompanied by a consolidated balance sheet:

1. of any group in which the UK RIE is a subsidiary undertaking; or
2. (if the UK RIE is not a subsidiary undertaking in any group) of any group of which the UK RIE is a parent undertaking.

The FCA would expect to consider the financial risk assessment, any proposal with respect to an operational risk buffer and, if applicable, the consolidated balance sheet, in formulating its guidance on the amount of eligible financial resources it considers to be sufficient for the UK RIE to hold in order to meet the recognition requirements. In formulating its guidance, the FCA would, where relevant, consider whether or not the financial risk assessment makes adequate provision for the following risks:

1. the risks related to the administration and operation of the UK RIE as a business enterprise (whether as a result of adverse reputational effects, poor execution of business strategy, ineffective response to competition, or otherwise);
2. the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by a UK RIE (whether as a result of errors or delays in processing, system outages, insufficient capacity, fraud, data loss and leakage, or otherwise);
3. the risk that the financial position of the UK RIE may be adversely affected by its relationships (financial or non-financial) with other entities in the same group or by risks which may affect the financial position of the whole group, including reputational contagion; and
4. any other type of risk which is relevant to that particular UK RIE.

Operational and other risks: purpose of the risk buffer

The FCA would normally consider a UK recognised body to be failing the recognition requirements if it held financial resources less than the amount calculated under ■ REC 2.3.9G (1)(a)(i) (in respect of UK RIEs). The FCA therefore expects a UK recognised body to hold an operational risk buffer of a sufficient amount in excess of this minimum, to ensure that it is at all times able to comply with its regulatory obligations.

Operational and other risks: calculation of the operational risk buffer - UK recognised bodies

1. [deleted]
2. The FCA would normally expect a UK RIE to hold, in addition to the minimum amount determined under ■ REC 2.3.9G (1)(a)(ii), an operational risk buffer consistent with a risk-based approach.
(a) Where the amount of eligible financial resources calculated by a UK RIE under REC 2.3.17G (5) (the risk-based approach) is greater than the amount of eligible financial resources calculated under REC 2.3.13 G (the standard approach), and the difference is of an amount sufficient to serve the purposes of the operational risk buffer, then the FCA considers that there would be no need for a UK RIE to hold any further amount as an operational risk buffer.

(b) Where the amount of eligible financial resources calculated by a UK RIE under REC 2.3.17G (5) (the risk-based approach) is not sufficient to provide an effective operational risk buffer over and above the amount calculated under REC 2.3.13 G (the standard approach), then the FCA would expect the UK RIE to include within its annual risk assessment a proposal to hold additional financial resources sufficient to constitute an operational risk buffer.

(3) As the operational risk buffer is an amount in excess of the minimum financial resources sufficient to meet the recognition requirements, the FCA would normally not regard a UK recognised body that draws upon or temporarily depletes the operational risk buffer to have failed or be failing a recognition requirement in respect of its financial resources. However, the FCA would expect to be notified as soon as reasonably practicable if the UK recognised body draws upon, or intends to draw upon, its operational risk buffer.
2.4 Suitability

Schedule to the Recognition Requirements Regulations, Paragraph 2

(1) The [UK RIE] must be a fit and proper person to perform the [relevant functions] of a [UK RIE].

(2) In considering whether this requirement is satisfied, the [FCA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any person.

(3) The persons who effectively direct the business and operations of the [UK RIE] must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it.

(4) The persons who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

[deleted]

In determining whether a UK recognised body is a fit and proper person, the FCA may have regard to any relevant factor including, but not limited to:

(1) the commitment shown by the UK recognised body's governing body to satisfying the recognition requirements and to complying with other obligations in or under the Act;

(2) its arrangements, policies and resources for fulfilling its obligations under the Act in relation to its activities as a UK recognised body;

(3) the extent to which its constitution and organisation provide for effective governance;

(4) the arrangements made to ensure that its governing body has effective oversight of the UK recognised body's relevant functions;

(5) the access which its regulatory department has to the governing body;

(6) the size and composition of its governing body, including:
(a) the number of members of the governing body who represent members of the UK recognised body or other persons and the types of person whom they represent;

(b) the number and responsibilities of any members of the governing body with executive roles within the UK recognised body; and

(c) the number of independent members of the governing body;

(7) the structure and organisation of its governing body, including any distribution of responsibilities among its members and committees;

(8) the integrity and competence of its governing body and key individuals;

(9) breaches of any relevant law, regulation or code of practice by the UK recognised body or its key individuals;

(10) its arrangements for ensuring that it employs individuals who are honest and demonstrate high standards of integrity;

(11) the effectiveness of its arrangements to control conflicts of interest (see also REC 2.5); and

(12) the independence of its regulatory department from its commercial and marketing departments.

In determining whether a UK recognised body is a fit and proper person, the FCA may have regard to its connections with:

(1) any undertaking in the same group;

(2) any owner or part-owner of the UK recognised body;

(3) any person who has the right to appoint or remove members of the governing body or other key individuals;

(4) any person who is able in practice to appoint or remove members of the governing body or other key individuals;

(5) any person in accordance with whose instructions the governing body or any key individual is accustomed to act; and

(6) any key individual in relation to the UK recognised body.

In assessing whether its connection with any person could affect whether a UK recognised body is a fit and proper person, the FCA may have regard to:

(1) the reputation and standing of that other person, including his standing with any relevant UK or overseas regulator;

(2) breaches of any law or regulation by that other person;
(3) the roles of any of the UK recognised body's key individuals who have a position within organisations under the control or influence of that other person, including their responsibilities in that organisation and the extent and type of their access to its senior management or governing body;

(4) the extent to which the UK recognised body operates as a distinct entity notwithstanding its connection with that other person;

(5) the extent to which the UK recognised body’s governing body is responsible for its day-to-day management and operations;

but nothing in this paragraph should be taken to imply any restriction on the ability of a UK recognised body to outsource any function to any person in a manner consistent with Regulation 6 of the Recognition Requirements Regulations.

In assessing whether the persons who effectively direct the business and operations of the UK RIE are of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it, the FCA may have regard to the repute and experience of the UK RIE’s key individuals.
2.5 Systems and controls and conflicts

Schedule to the Recognition Requirements Regulations, paragraph 3

2.5.1 The [UK RIE] must ensure that the systems and controls used in the performance of its [relevant functions] are adequate, and appropriate for the scale and nature of its business.

(1) Sub-paragraph (1) applies in particular to systems and controls concerning:
(a) the transmission of information;
(b) the assessment, mitigation and management of risks to the performance of the [UK RIE's relevant functions];
(c) the effecting and monitoring of transactions on the [UK RIE];
(c) the technical operation of the [UK RIE], including contingency arrangements for disruption to its facilities;
(d) the operation of the arrangements mentioned in paragraph 4(2)(d); and
(e) (where relevant) the safeguarding and administration of assets belonging to users of the [UK RIE's] facilities.

Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ca)

2.5.1A Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that:

appropriate arrangements are made to -
(i) identify conflicts between the interests of the [UK RIE], its owners and operators and the interests of the persons who make use of its facilities or the interests of the financial markets operated by it; and
(ii) manage such conflicts so as to avoid adverse consequences for the operation of the financial markets operated by the [UK RIE] and for the persons who make use of its facilities.
In assessing whether the systems and controls used by a UK recognised body in the performance of its relevant functions are adequate and appropriate for the scale and nature of its business, the FCA may have regard to the UK recognised body's:

1. arrangements for managing, controlling and carrying out its relevant functions, including:
   a. the distribution of duties and responsibilities among its key individuals and the departments of the UK recognised body responsible for performing its relevant functions;
   b. the staffing and resources of the departments of the UK recognised body responsible for performing its relevant functions;
   c. the arrangements made to enable key individuals to supervise the departments for which they are responsible;
   d. the arrangements for appointing and supervising the performance of key individuals (and their departments); and
   e. the arrangements by which the governing body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of, key individuals under review;

2. arrangements for the identification and management of conflicts of interest;

3. arrangements for internal and external audit; and

4. information technology systems.

The following paragraphs set out other matters to which the FCA may have regard in assessing the systems and controls used for the transmission of information, risk management, the effecting and monitoring of transactions, the operation of settlement arrangements (the matters covered in paragraph 4(2)(d) of the Schedule to the Recognition Requirements Regulations) and the safeguarding and administration of assets.

In assessing a UK recognised body's systems and controls for the transmission of information, the FCA may also have regard to the extent to which these systems and controls ensure that information is transmitted promptly and accurately:

1. within the UK recognised body itself;

2. to members; and

3. (where appropriate) to other market participants or other relevant persons.
Risk management

In assessing a UK recognised body’s systems and controls for assessing and managing risk, the FCA may also have regard to the extent to which these systems and controls enable the UK recognised body to:

1. identify all the general, operational, legal and market risks wherever they arise in its activities;
2. measure and control the different types of risk;
3. allocate responsibility for risk management to persons with appropriate knowledge and expertise; and
4. provide sufficient, reliable information to key individuals and, where relevant, the governing body of the UK recognised body.

Effecting and monitoring of transactions and operation of settlement arrangements

In assessing a UK RIE’s systems and controls for the effecting and monitoring of transactions, and for the operation of settlement arrangements, the FCA may have regard to the totality of the arrangements and processes through which the UK RIE’s transactions are effected, cleared, and settled, including:

1. a UK RIE’s arrangements under which orders are received and matched, its arrangements for trade and transaction reporting, and (if relevant) its arrangements with another person under which any rights or liabilities arising from transactions are discharged including arrangements for transmission to a settlement system or clearing house;
2. (if relevant), a UK RIE’s arrangements under which instructions relating to a transaction to be cleared by another person by means of a clearing facilitation service are entered into its systems by the relevant other person and transmitted to the other person; and
3. the arrangements made by the UK RIE for monitoring and reviewing the operation of these systems and controls.

Safeguarding and administration of assets

In assessing a UK recognised body’s systems and controls for the safeguarding and administration of assets belonging to users of its facilities, the FCA may have regard to the totality of the arrangements and processes by which the UK recognised body:

1. records the assets held and the identity of the owners of (and other persons with relevant rights over) those assets;
2. records any instructions given in relation to those assets;
3. records the carrying out of those instructions;
(4) records any movements in those assets (or any corporate actions or other events in relation to those assets); and

(5) reconciles its records of assets held with the records of any custodian or sub-custodian used to hold these assets, and with the records of beneficial or legal ownership of those assets.

Management of conflicts of interest

A conflict of interest arises in a situation where a person with responsibility to act in the interests of one person may be influenced in his action by an interest or association of his own, whether personal or business or employment related. Conflicts of interest can arise both for the employees of UK recognised bodies and for the members (or other persons) who may be involved in the decision-making process, for example where they belong to committees or to the governing body. Conflicts of interest may also arise for the UK recognised body itself as a result of its connection with another person.

The FCA recognises that a UK RIE has legitimate interests of its own and that its general business policy may properly be influenced by other persons (such as its owners). Such a connection does not necessarily imply the existence of a conflict of interest nor is it necessary to exclude individuals closely connected with other persons (for example, those responsible for the stewardship of the owner’s interests) from all decision-making processes in a UK recognised body. However, there may be decisions, primarily regulatory decisions, from which it may be appropriate to exclude an individual in certain circumstances where an interest, position or connection of his conflicts with the interest of the recognised body.

REC 2.5.13 G to REC 2.5.16 G set out the factors to which the FCA may have regard in assessing a UK recognised body’s systems and controls for managing conflicts of interest.

The FCA may have regard to the arrangements a UK recognised body makes to structure itself and to allocate responsibility for decisions so that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest, including:

1. the size and composition of the governing body and relevant committees;
2. the roles and responsibilities of key individuals, especially where they also have responsibilities in other organisations;
3. the arrangements for transferring decisions or responsibilities to alternates in individual cases; and
4. the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant.

The FCA may also have regard to the systems and controls intended to ensure that confidential information is only used for proper purposes. Where relevant, recognised bodies will have to comply with section 348 (Restrictions on disclosure of confidential information by the FCA etc.) and regulations made under section 349 (Exemptions from section 348) of the Act.
The FCA may also have regard to the contracts of employment, staff rules, letters of appointment for members of the governing body, members of relevant committees and other key individuals and other guidance given to individuals on handling conflicts of interest. Guidance to individuals may need to cover:

1. The need for prompt disclosure of a conflict of interest to enable others, who are not affected by the conflict, to assist in deciding how it should be managed;

2. The circumstances in which a general disclosure of conflicts of interest in advance of any particular instance in which a conflict of interest arises may be sufficient;

3. The circumstances in which a general advance disclosure may not be adequate;

4. The circumstances in which it would be appropriate for a conflicted individual to withdraw from involvement in the matter concerned, without disclosing the interest; and

5. The circumstances in which safeguards in addition to disclosure would be required, such as the withdrawal of the individual from the decision-taking process, or from access to relevant information.

The FCA may also have regard to the arrangements made:

1. For enforcing rules or other provisions applicable to staff and other persons involved in regulatory decisions; and

2. To keep records of disclosures of conflicts of interest and the steps taken to handle them.

Internal and external audit

A UK recognised body’s arrangements for internal and external audit will be an important part of its systems and controls. In assessing the adequacy of these arrangements, the FCA may have regard to:

1. The size, composition and terms of reference of any audit committee of the UK recognised body’s governing body;

2. The frequency and scope of external audit;

3. The provision and scope of internal audit;

4. The staffing and resources of the UK recognised body’s internal audit department;

5. The internal audit department’s access to the UK recognised body’s records and other relevant information; and

6. The position, responsibilities and reporting lines of the internal audit department and its relationship with other departments of the UK recognised body.
Information technology systems

Information technology is likely to be a major component of the systems and controls used by any UK recognised body. In assessing the adequacy of the information technology used by a UK recognised body to perform or support its relevant functions, the FCA may have regard to:

1. the organisation, management and resources of the information technology department within the UK recognised body;
2. the arrangements for controlling and documenting the design, development, implementation and use of information technology systems; and
3. the performance, capacity and reliability of information technology systems.

The FCA may also have regard to the arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including:

1. the procedures for the evaluation and selection of information technology systems;
2. the arrangements for testing information technology systems before live operations;
3. the procedures for problem management and system change;
4. the arrangements to monitor and report system performance, availability and integrity;
5. the arrangements (including spare capacity and access to back-up facilities) made to ensure information technology systems are resilient and not prone to failure;
6. the arrangements made to ensure business continuity in the event that an information technology system does fail;
7. the arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access; and
8. the arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems.

The FCA may have regard to the arrangements made to keep clear and complete audit trails of all uses of information technology systems and to reconcile (where appropriate) the audit trails with equivalent information held by system users and other interested parties.
2.5A Guidance on Public Interest Disclosure
Act: Whistleblowing

Application and Purpose: Application

2.5A.1 FCA
This section is relevant to every UK recognised body to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

Purpose

2.5A.2 FCA
(1) The purposes of this section are to:

(a) provide UK recognised bodies with guidance regarding the provisions of PIDA; and

(b) Encourage UK recognised bodies to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system.

(2) In this section "worker" includes, but is not limited to, an individual who has entered into a contract of employment.

2.5A.3 FCA
The guidance in this section concerns the effect of PIDA in the context of the relationship between UK recognised bodies and the FCA. It is not comprehensive guidance on PIDA itself.

Practical Measures: Effect of PIDA

2.5A.4 FCA
Under PIDA, any clause or term in an agreement between a worker and his employer is void in so far as it purports to preclude the worker from making a protected disclosure (that is, "blow the whistle").

2.5A.5 FCA
In accordance with section 1 of PIDA:

(1) a "protected disclosure" is a qualifying disclosure which meets the relevant requirements set out in that section;

(2) a "qualifying disclosure" is a disclosure, made in good faith, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following (a "failure") has been, is being, or is likely to be, committed:

(a) a criminal offence; or
(b) a failure to comply with any legal obligation; or
(c) a miscarriage of justice; or
(d) the putting of the health and safety of any individual in danger; or
(e) damage to the environment; or
(f) deliberate concealment relating to any of (a) to (e);

it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

Internal Procedures

(1) UK recognised bodies are encouraged to consider adopting appropriate internal procedures which will encourage their workers with concerns to blow the whistle internally about matters which are relevant to the functions of the FCA.

(2) In considering appropriate internal procedures, UK recognised bodies may find the guidance provided to firms in SYSC 18.2.2 G (2) and SYSC 18.2.2 G (3) helpful.

Link to fitness and propriety

In determining whether a UK recognised body is a fit and proper person, the FCA may have regard to any relevant factor including, but not limited to, how the UK recognised body and key individuals have complied with any relevant law (see REC 2.4.3 G (9)).
2.6 General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading

2.6.1 Schedule to the Recognition Requirements Regulations, Paragraph 4(1)

The [UK RIE] must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

2.6.2 Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(aa)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

it has transparent and non-discretionary rules and procedures -

(i) to provide for fair and orderly trading, and

(ii) to establish objective criteria for the efficient execution of orders;

2.6.3 Schedule to the Recognition Requirements Regulations, Paragraph 4A

(1) The [UK RIE] must make arrangements for-

(a) current bid and offer prices for shares, and

(b) the depth of trading interest in shares at the prices which are advertised through its systems,

which are to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.7 EU and REC 2.6.21 EU to REC 2.6.24 EU)].

(2) If [a UK RIE] decides to give investment firms and credit institutions required to publish their quotes in shares-

(a) in accordance with Article 27 of [MiFID], or

(b) by the [FCA],
access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.

(3) The [FCA] may waive the requirements of sub-paragraph (1) in the circumstances specified-

(a) in the case of shares to be traded on a multilateral trading facility operated by the [UK RIE], in Article 29.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10 EU and REC 2.6.13 EU)]; or

(b) in the case of shares to be traded on a regulated market operated by the [UK RIE], in Article 44.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10 EU and REC 2.6.13 EU)].

Schedule to the Recognition Requirements Regulations, Paragraph 4B

(1) The [UK RIE] must make arrangements for the price, volume and time of transactions executed in shares to be made available to the public as soon as possible after the time of the transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.15 EU and REC 2.6.21 EU to REC 2.6.24 EU)].

(2) If a [UK RIE] decides to give investment firms and credit institutions required to make public details of their transactions in shares-

(a) in accordance with Article 28 of [MiFID], or

(b) by the [FCA].

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.

(3) The [FCA] may permit [UK RIEs] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained-

(a) in the case of shares traded on a multilateral trading facility operated by a [UK RIE], in Article 30.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18 EU)]; or

(b) in the case of shares traded on regulated market operated by a [UK RIE], in Article 45.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18 EU)].

(4) If the [FCA] permits [UK RIEs] to defer the publication required by sub-paragraph (1), those [UK RIEs] must ensure that the existence of and the terms of the permission are disclosed to users and members of their facilities and to investors.
Articles 29.2 and 44.2 of MiFID provide that the pre-trade transparency requirement can be waived based on market model or the size and type of orders. In particular this obligation can be waived in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Articles 30.2 and 45.2 of MiFID provide that publication of the details of transactions can be deferred based on their type or size. In particular this obligation can be deferred in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares.

Schedule to the Recognition Requirements Regulations, Paragraph 7E

The rules of the [UK RIE] must provide that the [UK RIE] must not exercise its power to suspend or remove from trading on a regulated market operated by it any financial instrument which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

Article 17 of the MiFID Regulation

<table>
<thead>
<tr>
<th>Pre-trade transparency obligations</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) <strong>A ... market operator operating an MTF or a regulated market</strong> shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [(see REC 2.6.8 EU)], make public the information set out in paragraphs 2 to 6.</td>
</tr>
<tr>
<td>(2) <strong>Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.</strong></td>
</tr>
<tr>
<td>(3) <strong>Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.</strong></td>
</tr>
<tr>
<td>The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.</td>
</tr>
<tr>
<td><strong>In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.</strong></td>
</tr>
<tr>
<td>(4) <strong>Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each</strong></td>
</tr>
</tbody>
</table>
Pre-trade transparency obligations

share specified in paragraph 1, make public continuously throughout its normal trading hours the price that would best satisfy the system’s trading algorithm and the volume that would potentially be executable at that price by participants in that system.

(5) Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraphs 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.

In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.

(6) A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II. [(see REC 2.6.8 EU)]

Table 1 of Annex II to the MiFID Regulation: Information to be made public in accordance with Article 17 (see REC 2.6.9EU)

<table>
<thead>
<tr>
<th>Type of system</th>
<th>Description of system</th>
<th>Summary of information to be made public, in accordance with Article 17</th>
</tr>
</thead>
<tbody>
<tr>
<td>continuous auction order book trading system</td>
<td>a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis</td>
<td>the aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels.</td>
</tr>
<tr>
<td>quote-driven trading system</td>
<td>a system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires</td>
<td>the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices</td>
</tr>
</tbody>
</table>
### Summary of information to be made public, in accordance with Article 17

<table>
<thead>
<tr>
<th>Type of system</th>
<th>Description of system</th>
<th>Summary of information to be made public</th>
</tr>
</thead>
<tbody>
<tr>
<td>periodic auction trading system</td>
<td>a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention</td>
<td>the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price</td>
</tr>
<tr>
<td>trading system not covered by first three rows</td>
<td>A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by the first three rows</td>
<td>adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit</td>
</tr>
</tbody>
</table>

#### Recital 14 to the MiFID Regulation

A waiver from pre-transparency obligations arising under Articles 29 or 44 of [MiFID] [(see REC 2.6.3 UK)] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those transactions in liquid shares which they conclude on a bilateral basis under the rules of a regulated market or an MTF where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID].

#### Article 18 of the MiFID Regulation

Waivers based on market model and type of order or transaction

(1) Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3 UK)] may be granted by the [FCA] for systems
<table>
<thead>
<tr>
<th>Waivers based on market model and type of order or transaction</th>
</tr>
</thead>
<tbody>
<tr>
<td>operated by an MTF or a regulated market, if those systems satisfy one of the following criteria:</td>
</tr>
<tr>
<td>(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;</td>
</tr>
<tr>
<td>(b) they formalise negotiated transactions [(see REC 2.6.11 EU)], each of which meets one of the following criteria:</td>
</tr>
<tr>
<td>(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the regulated market or MTF operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;</td>
</tr>
<tr>
<td>(ii) it is subject to conditions other than the current market price of the share [see REC 2.6.12 EU].</td>
</tr>
</tbody>
</table>

For the purposes of point (b), the other conditions specified in the rules of the regulated market or MTF for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

(2) Waivers in accordance with Articles 29(2) and 44(2) of [MiFID] [(see REC 2.6.3 UK)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the regulated market or the MTF pending their being disclosed to the market.

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### Article 19 of the MiFID Regulation

<table>
<thead>
<tr>
<th>References to negotiated transaction</th>
</tr>
</thead>
</table>
| For the purpose of Article 18(1)(b) [(see REC 2.6.10 EU)] a negotiated transaction shall mean a transaction involving members or participants of a regulated market or an MTF which is negotiated privately but executed within the regulated market or MTF and where that member or participant in doing so undertakes one of the following tasks:
References to negotiated transaction

(a) dealing on own account with another member or participant who acts for the account of a client;
(b) dealing with another member or participant, where both are executing orders on own account;
(c) acting for the account of both the buyer and seller;
(d) acting for the account of the buyer, where another member or participant acts for the account of the seller;
(e) trading for own account against a client order.

Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

(1) A transaction related to an individual share in a portfolio trade shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10 EU)], as a transaction subject to conditions other than the current market price.

(2) A volume weighted average price transaction shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10 EU)], as a transaction subject to conditions other than the current market price.

Article 20 of the MiFID Regulation

Waivers in relation to transactions which are large in scale

An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [(see REC 2.6.14 EU)]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.

Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size

<table>
<thead>
<tr>
<th>Class in terms of average daily turnover (ADT)</th>
<th>ADT &lt; 500 000</th>
<th>?500 000 ADT &lt; 1 000 000</th>
<th>1 000 000 ADT &lt; 25 000 000</th>
<th>25 000 000 ADT &lt; 50 000 000</th>
<th>ADT &gt; 50 000 000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum size of order</td>
<td>?50 000</td>
<td>?100 000</td>
<td>?250 000</td>
<td>?400 000</td>
<td>?500 000</td>
</tr>
</tbody>
</table>
2.6.15 FCA

**Article 27(1) of the MiFID Regulation**

<table>
<thead>
<tr>
<th>Post-trade transparency obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. (...) regulated markets, and (...) market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded (...) within their systems, make public the following details:</td>
</tr>
<tr>
<td>(a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [(see REC 2.6.16 EU)]</td>
</tr>
<tr>
<td>(b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable [(see REC 2.6.17 EU)];</td>
</tr>
<tr>
<td>(c) an indication that the trade was a negotiated trade, where applicable;</td>
</tr>
<tr>
<td>(d) any amendments to previously disclosed information, where applicable.</td>
</tr>
</tbody>
</table>

Those details shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same share taking place at the same price at the same time.

2.6.16 FCA

**Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation**

| 2. Trading Day | The trading day on which the transaction was executed. |
| 3. Trading Time | The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours. |
| 6. Instrument Identification | This shall consist in: |
| | - a unique code to be decided by the competent authority (if any) to which |
the report is made identifying the [share] which is the subject of the transaction;

- if the [share] in question does not have a unique identification code, the report must include the name of the [share] ...

16. Unit Price

The price per [share] excluding commission and (where relevant) accrued interest. ...

17. Price Notation

The currency in which the price is expressed ...

18. Quantity

The number of units of the [shares].

21. Venue identification

Identification of the venue where the transaction was executed. That identification shall consist ... [of the regulated market or MTF’s] ... unique harmonised identification code;

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Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

1. A transaction related to an individual share in a portfolio trade ... shall ... be considered, for the purposes of Article 27(1)(b) [(see REC 2.6.15 EU)] as a transaction where the exchange of shares is determined by factors other than the current market valuation of the share.

2. A volume weighted average price transaction ... shall be considered, for the purposes of Article 27(1)(b) [(see REC 2.6.15 EU)] as a transaction where the exchange of shares is determined by factors other than the current market valuation of the share.

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Article 28 of the MiFID Regulation

Deferred publication of large transactions

The deferred publication of information in respect of transactions may be authorised, for a period no longer than the period specified in Table 4 in Annex II [(see REC 2.6.20 EU)] for the class of share and transaction concerned, provided the following criteria are satisfied:

(a) the transaction is between [a MiFID investment firm] dealing on own account and a client of that firm;
Deferred publication of large transactions

(b) the size of that transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II [(see REC 2.6.20 EU)].

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.

Article 29(3), second sentence of the MiFID Regulation

Each constituent transaction [of a portfolio trade] shall be assessed separately for the purposes of determining whether deferred publication in respect of that transaction is available under Article 28 (see REC 2.6.18 EU).

Table 4 in Annex II to the MiFID Regulation: Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share of that type.

<table>
<thead>
<tr>
<th>Class of shares in terms of average daily turnover (ADT)</th>
<th>Permitted delay for publication</th>
<th>60 minutes</th>
<th>180 minutes</th>
<th>Until end of trading day (or roll-over to noon of next trad-</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADT&lt; ?10 000</td>
<td>?10 000</td>
<td>Greater of</td>
<td>?15% of ADT and ?25 000</td>
<td>Greater of</td>
</tr>
<tr>
<td>?10 000 ? ADT &gt; ?1 000</td>
<td>?1 000 ADT</td>
<td>Lower of</td>
<td>?5% of ADT and ?25 000</td>
<td>Lower of</td>
</tr>
<tr>
<td>?1 000 ADT&gt; ?50 000</td>
<td>ADT&lt; ?50 000</td>
<td>Lower of</td>
<td>?10% of ADT and ?3 500 000</td>
<td>Lower of</td>
</tr>
<tr>
<td>?50 000 ADT&lt; ADT&lt; ?15 000</td>
<td>?5 000 ADT</td>
<td>Lower of</td>
<td>?20% of ADT and ?7 500 000</td>
<td>Lower of</td>
</tr>
<tr>
<td>ADT&lt; ?15 000 ? ADT&lt; ?75 000</td>
<td>?75 000 ADT</td>
<td>Greater of</td>
<td>?15% of ADT and ?7 500 000</td>
<td>Greater of</td>
</tr>
<tr>
<td>ADT&lt; ?75 000</td>
<td>?75 000 ADT</td>
<td>Lower of</td>
<td>?30% of ADT and ?30 000</td>
<td>Lower of</td>
</tr>
</tbody>
</table>
Article 29 of the MiFID Regulation

Publication and availability of pre- and post-trade transparency data

1. A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF concerned, and remains available until it is updated.

2. Pre-trade information, and post-trade information relating to transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating
to such transactions shall be made available in any case within three minutes of the relevant transaction.

3. Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. ...

4. Post-trade information referring to transactions taking place on a [regulated market or MTF] but outside its normal trading hours shall be made public before the opening of the next trading day of the [regulated market or MTF] on which the transaction took place.

Recital 18 to the MiFID Regulation

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter time.

Article 30 of the MiFID Regulation

Public availability of pre- and post-trade information

... pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

(a) the facilities of a regulated market or an MTF;
(b) the facilities of a third party;
(c) proprietary arrangements.

Article 32 of the MiFID Regulation

Arrangements for making information public

Any arrangement to make information public, adopted for the purposes of Article ... 30 [(see REC 2.6.23 EU)] ... , shall satisfy the following conditions:

(a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
(b) it must facilitate the consolidation of the data with similar data from other sources;
(c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.
In determining whether:

1. business conducted by means of a UK RIE’s facilities is conducted so;

2. [deleted]

as to afford proper protection to investors, the FCA may, in addition to the matters dealt with in REC 2.7 to REC 2.12, have regard to all the arrangements made by the UK recognised body concerning the operation of its facilities.

The FCA may also have regard to the extent to which the UK recognised body’s rules, procedures for monitoring and overseeing the use of its facilities:

1. include appropriate measures to prevent the use of its facilities for abusive or improper purposes;
2. provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its facilities;
3. provide appropriate information to enable users of its facilities to monitor their use of the facilities;
4. include appropriate arrangements to enable users of its facilities to raise queries about any use of those facilities which they are reported to have made;
5. include appropriate arrangements to enable users of its facilities to comply with any relevant regulatory or legal requirements; and
6. include appropriate arrangements to reduce the risk that those facilities will be used in ways which are incompatible with relevant regulatory or legal requirements;

and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the UK recognised body’s facilities, the types of persons who will use the facilities and the use which they will make of those facilities.

In determining whether a UK RIE is ensuring that business conducted by means of its facilities is conducted in an orderly manner (and so as to afford proper protection to investors), the FCA may have regard to the extent to which the UK RIE’s rules and procedures:

1. are consistent with the Code of Market Conduct (see MAR 1);
2. prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and
3. prohibit or prevent:
   a. trades in which a party is improperly indemnified against losses;
(b) trades intended to create a false appearance of trading activity ("wash trades");
(c) cross trades executed for improper purposes;
(d) improperly prearranged or prenegotiated trades;
(e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades"); and
(f) trades which one party does not intend to close out or settle.

In determining whether a UK RIE is ensuring that business conducted by means of its facilities is conducted in an orderly manner (and so as to afford proper protection to investors), the FCA may have regard to whether the UK RIE’s arrangements and practices:

(1) enable members and clients for whom they act to obtain the best price available at the time for their size and type of trade;

(2) ensure:
   (a) sufficient pre-trade transparency in the UK RIE’s markets taking account of the practices in those markets and the trading systems used; and
   (b) sufficient post-trade transparency in the UK RIE’s markets taking into account the nature and liquidity of the specified investments traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for members and clients for whom they act, and the needs of different market participants for timely price information;

(2A) (2) does not apply to a UK RIE’s markets for shares admitted to trading on a regulated market. For pre-trade and post-trade transparency for a UK RIE’s markets for shares admitted to trading on a regulated market, see in particular REC 2.6.3 UK and REC 2.6.4 UK and REC 2.6.7 EU to REC 2.6.24 EU;

(3) include procedures which enable the UK RIE to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and

(4) if they include arrangements to support or encourage liquidity:
   (a) are transparent;
   (b) are not likely to encourage any person to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any client for whom he acts);
   (c) are consistent with a reliable, undistorted price-formation process; and
   (d) alleviate dealing or other identified costs associated with trading on the UK RIE’s markets and do not subsidise a market position of a user of its facilities.

(1) The FCA accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with
the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a UK RIE, subject to any necessary safeguards, where appropriate.

(2) (1) does not apply to a UK RIE’s markets for shares admitted to trading on a regulated market. For pre-trade and post-trade transparency for a UK RIE’s markets for shares admitted to trading on a regulated market, see in particular ■ REC 2.6.3 UK and ■ REC 2.6.4 UK and ■ REC 2.6.7 EU to ■ REC 2.6.24 EU.

Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements

The FCA has exercised its power referred to in ■ REC 2.6.3 UK(3) to waive the pre-trade transparency requirements referred to in ■ REC 2.6.3 UK(1). The waivers granted are those based on market model (see ■ REC 2.6.10 EU1), type of order (see ■ REC 2.6.10 EU2) and transactions which are large in scale (see ■ REC 2.6.13 EU). These waivers apply to all regulated markets and MTFs operated by UK RIEs.

The FCA has exercised its power referred to in ■ REC 2.6.4 UK(3) to permit the deferral of the post-trade transparency requirements referred to in ■ REC 2.6.4 UK(1). This permission is with respect to large transactions (see ■ REC 2.6.17 EU). This permission applies to all regulated markets and MTFs operated by UK RIEs.

Arrangements for making information public

The FCA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ REC 2.6.24 EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

(1) In respect of arrangements facilitating the consolidation of data as required in ■ REC 2.6.24 EU(b), the FCA considers information as being made public in accordance with ■ REC 2.6.24 EU(b), if it:

(a) is accessible by automated electronic means in a machine-readable way;

(b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and

(c) is accompanied by instructions outlining how users can access the information.

(2) The FCA considers that an arrangement fulfils the 'machine-readable' criteria where the data:

(a) is in a physical form that is designed to be read by a computer;

(b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
(c) is in a format that is known in advance by the party wishing to access the data.

(3) The FCA considers that publication on a non-machine-readable website would not meet the MiFID requirements.

(4) The FCA considers that information that is made public in accordance with REC 2.6.24 EU should conform to a consistent and structured format based on industry standards. Regulated markets or market operators operating an MTF can choose the structure that they use.
2.7 Access to facilities

2.7.1 Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

access to the [UK RIE's] facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors and is in accordance with paragraph 7B;

2.7.1A Schedule to the Recognition Requirements Regulations, Paragraph 7B

(1) The [UK RIE] must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities.

(2) In particular those rules must specify the obligations for users or members of its facilities arising from -

(a) the constitution and administration of the [UK RIE];

(b) rules relating to transactions on the market;

(c) its professional standards for staff of any investment firm or credit institution having access to or membership of a financial market operated by the [UK RIE];

(d) conditions established under sub-paragraph (3)(c) for access to or membership of a financial market operated by the [UK RIE] by persons other than investment firms or credit institutions; and

(e) the rules and procedures for clearing and settlement of transactions concluded on a financial market operated by the [UK RIE].

(3) Rules of the [UK RIE] about access to, or membership of, a financial market operated by it must permit the [UK RIE] to give access to or admit to membership (as the case may be) only -

(a) an investment firm,
(b) a credit institution, or
(c) a person who -
   (i) is fit and proper,
   (ii) has a sufficient level of trading ability and competence,
   (iii) where applicable, has adequate organisational arrangements, and
   (iv) has sufficient resources for the role he is to perform, taking into account the [UK RIE's] arrangements under paragraph 4(2)(d).

(4) Rules under this paragraph must enable -
   (a) an investment firm authorised under Article 5 of [MiFID], or
   (b) a credit institution authorised under the Banking Consolidation Directive,

by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have direct or remote access to or membership of, any financial market operated by the [UK RIE] on the same terms as a UK firm.

(5) The [UK RIE] must make arrangements regularly to provide the [FCA] with a list of users or members of its facilities.

(6) This paragraph is without prejudice to the generality of paragraph 4.

Schedule to the Recognition Requirements Regulations, Paragraph 7C

(1) This paragraph applies to [a UK RIE] which provides central counterparty, clearing or settlement facilities.

(2) The [UK RIE] must make transparent and non-discriminatory rules based on objective criteria, governing access to those facilities.

(3) The rules under sub-paragraph (2) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

(4) The [UK RIE] may refuse access to those facilities on legitimate commercial grounds.
In assessing whether access to a UK recognised body’s facilities is subject to criteria designed to protect the orderly functioning of the market, or of those facilities, and the interests of investors, the FCA may have regard to whether:

(1) the UK recognised body limits access as a member to persons:
   (a) over whom it can with reasonable certainty enforce its rules contractually;
   (b) who have sufficient technical competence to use its facilities;
   (c) whom it is appropriate to admit to membership having regard to the size and sophistication of users of its facilities and the nature of the business effected by means of, or cleared through, its facilities; and
   (d) (if appropriate) who have adequate financial resources in relation to their exposure to the UK recognised body or its central counterparty;

(2) [deleted]

(3) indirect access to the UK recognised body’s facilities is subject to suitable criteria, remains the responsibility of a member of the UK recognised body and is subject to its rules; and

(4) where access is granted to members outside the United Kingdom, there are adequate safeguards against financial crime (see also REC 2.10).

REC 2.7.3 G does not apply to a UK RIE’s arrangements to grant access to investment firms or credit institutions.

Electronic access

The FCA may have regard to the arrangements made to permit electronic access to the UK recognised body’s facilities and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its facilities by persons other than its members, including:

(1) the rules and guidance governing members’ procedures, controls and security arrangements for inputting instructions into the system;

(2) the rules and guidance governing the facilities members provide to clients to input instructions into the system and the restrictions placed on the use of those systems;

(3) the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;

(4) the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and

(5) procedures to determine whether to suspend trading by those systems or access to them by or through individual members.
2.8 Settlement and clearing facilitation services

2.8.1 Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)
Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
satisfactory arrangements which comply with paragraph 7D are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the [UK RIE] (being rights and liabilities in relation to those transactions);

2.8.1A Schedule to the Recognition Requirements Regulations, Paragraph 7D
(1) The rules of the [UK RIE] must permit a user or member of a regulated market operated by it to use whatever settlement facility he chooses for a transaction.
(2) Sub-paragraph (1) only applies where -
   (a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and
   (b) the [UK RIE] is satisfied that the smooth and orderly functioning of the financial markets will be maintained.

2.8.2 [deleted]

2.8.3 In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions, the FCA may have regard to the UK recognised body’s:
   (1) rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services;
   (2) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
   (3) where relevant, arrangements for making deliveries and payments, in all relevant jurisdictions;
(4) procedures to detect and deal with the failure of a member to settle in accordance with its rules;

(5) arrangements for taking action to settle a trade if a member does not settle in accordance with its rules;

(6) arrangements for monitoring its members’ settlement performance; and

(7) (where appropriate) default rules and default procedures.

A UK recognised body will not be regarded as failing to comply with the recognition requirement merely because it is unable to arrange for a specific transaction to be settled.
2.9 Transaction recording

2.9.1 FCA

Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(e)
Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-
satisfactory arrangements are made for recording transactions effected on
the [UK RIE], and transactions (whether or not effected on the [UK RIE])
which are cleared or to be cleared by means of its facilities;

2.9.2 [deleted]

2.9.3 FCA

In determining whether a UK recognised body has satisfactory arrangements for recording
the transactions effected on its facilities, or cleared or to be cleared by another person by
means of, its facilities, the FCA may have regard to:

(1) whether the UK recognised body has arrangements for creating, maintaining
and safeguarding an audit trail of transactions for at least three years (five years
in respect of transactions carried out by members who are not incorporated in the
United Kingdom if the UK recognised body is a regulated market); and

(2) the type of information recorded and the extent to which the record includes
details for each transaction of:

(a) the name of the investment (and, if relevant, the underlying asset) and the
price, quantity and date of the transaction;

(b) the identities and, where appropriate, the roles of the counterparties to the
transaction;

(c) if the UK recognised body’s rules make provision for transactions or clearing
facilitation services to be effected, in more than one type of facility, or
under more than one part of its rules, the type of facility in which, or the
part of its rules under which, the transaction or clearing facilitation service
was effected; and

(d) the date and manner of settlement of the transaction.

2.9.4 [deleted]
2.10 Financial crime and market abuse

2.10.1 [deleted]

2.10.2 [deleted]

2.10.3 FCA

In determining whether a UK recognised body’s measures are appropriate to reduce the extent to which its facilities can be used for a purpose connected with market abuse or financial crime, to facilitate their detection and to monitor their incidence, the FCA may have regard to:

(1) whether the rules of the UK recognised body enable it to disclose any information to the FCA, or other appropriate bodies involved in the detection, prevention or pursuit of market abuse or financial crime in the United Kingdom or overseas; and

(2) whether the arrangements, resources, systems, and procedures of the UK recognised body enable it to:
   
   (a) monitor the use made of its facilities so as to obtain information regarding possible patterns of normal, abnormal or improper use of those facilities;

   (b) detect possible instances of market abuse and financial crime, for example, by detecting suspicious patterns in the use of its facilities;

   (c) communicate information about market abuse and financial crime promptly and accurately to appropriate organisations; and

   (d) cooperate with all relevant bodies in the prevention, investigation and pursuit of market abuse and financial crime.

2.10.4 FCA

The law on market abuse and financial crime, including Part VI of the Criminal Justice Act 1988 and the Money Laundering Regulations, applies to UK recognised bodies. This recognition requirement (and this guidance) does not restrict, diminish or alter the obligations contained in that legislation.
2.11 Custody

Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(g)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-

where the [UK RIE's] facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.

2.11.2 [deleted]

2.11.3 In determining whether a UK recognised body has made satisfactory arrangements for the safeguarding and administration of assets belonging to the users of its facilities, the FCA may have regard to:

(1) the level of protection which the arrangements provide against the risk of theft or other types or causes of loss;

(2) whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets;

(3) whether the arrangements ensure that the assets are not transferred to the UK recognised body or to any other person to settle the debts of the owner (or other person with the appropriate rights over the assets) except in accordance with valid instructions from a person entitled to give those instructions, or in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets;

(4) whether the arrangements include satisfactory procedures to ensure that any rights arising in relation to the assets held as a result of any actions by the issuers of those assets (or other relevant persons) are held, transferred or acted upon in a timely and accurate manner in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets;

(5) whether there are adequate arrangements to ensure the proper segregation of assets belonging to the UK recognised body (or to undertakings in the same group) from those belonging to the users of its facilities for the safeguarding and administration of assets;
(6) whether the arrangements include satisfactory procedures for the selection, oversight and review of custodians or sub-custodians used to hold the assets;

(7) whether the agreements by which the UK recognised body undertakes to safeguard and administer assets belonging to users of its facilities include appropriate information regarding the terms and conditions of that service and the obligations of the UK recognised body to the user of the service and of the user of the service to the UK recognised body;

(8) whether the records kept of those assets and the operation of the safeguarding services provide sufficient accurate and timely information:
   (a) to identify the legal and beneficial owners of the assets and of any persons who have charges over, or other interests, in the assets;
   (b) to record separately any additions, reductions and transfers in each account of assets held for safeguarding or administration; and
   (c) to identify separately the assets owned by (or, where appropriate, on behalf of) different persons, including, where appropriate, the assets owned by members of the UK recognised body and their clients;

(9) the frequency of reconciliation of the assets held by (or on behalf of) the UK recognised body with the accounts held with the UK recognised body by the users of its safeguarding and administration services and the extent of the arrangements for resolving a shortfall identified in any reconciliation; and

(10) the frequency with which statements of their holdings are provided to the users of the safeguarding and administration services, to the owners of the assets held and other appropriate persons in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets.

2.11.4 Where a UK recognised body arranges for other persons to provide services for the safeguarding and administration services of assets belonging to users of its facilities, it will also need to satisfy the recognition requirement in Regulation 6 of the Recognition Requirements Regulations (see 2.11.4).
2.12 Availability of relevant information and admission of financial instruments to trading (UK RIEs only)

2.12.1 Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(c)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

(c) appropriate arrangements are made for relevant information to be made available (whether by the [UK RIE] or, where appropriate, by issuers of the specified investments) to persons engaged in dealing in specified investments on the [UK RIE];

2.12.2 Schedule to the Recognition Requirements Regulations, Paragraph 4(3)

In sub-paragraph [4(2)(c)], "relevant information" means information which is relevant in determining the current value of the specified investments.

2.12.2A Schedule to the Recognition Requirements Regulations, Paragraph 7A

(1) The [UK RIE] must make clear and transparent rules concerning the admission of financial instruments to trading on any financial market operated by it.

(2) The rules must ensure that all financial instruments admitted to trading on any regulated market operated by the [UK RIE] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [MiFID Regulation], where applicable).

(3) The rules must ensure that -

(a) all transferable securities admitted to trading on a regulated market operated by the [UK RIE] are freely negotiable (in accordance with Chapter V of the [MiFID Regulation], where applicable); and

(b) all contracts for derivatives admitted to trading on a regulated market operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.
The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a multilateral trading facility operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded.

The [UK RIE] must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.

The [UK RIE] must maintain arrangements to assist users of a regulated market operated by it to obtain access to information made public under the disclosure obligations.

The [UK RIE] must maintain arrangements regularly to review whether the financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.

The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a regulated market operated by it a transferable security which has been admitted to trading on another regulated market, the [UK RIE] -

(a) must inform the issuer of that security as soon as is reasonably practicable; and

(b) may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, it may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

... This paragraph is without prejudice to the generality of paragraph 4.

Article 35 of the MiFID Regulation

Transferable securities

1. Transferable securities shall be considered freely negotiable for the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2A UK)] if they can be traded between the parties to a transaction, and subsequently transferred without restriction, and if all
### Transferable securities

securities within the same class as the security in question are fungible.

2. *Transferable securities* which are subject to a restriction on transfer shall not be considered as freely negotiable unless the restriction is not likely to disturb the market.

3. *Transferable securities* that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.

4. When exercising its discretion whether to admit a share to trading, a *regulated market* shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:

   - (a) the distribution of those shares to the public; and
   - (b) such historical financial information, information about the *issuer*, and information providing a business overview as is required to be prepared under [the *PD*], or is or will be otherwise publicly available.

5. A *transferable security* that is officially listed in accordance with *[CARD]*, and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.

6. For the purposes of Article 40(1) of *[MiFID]* *(see REC 2.12.2A UK)*, when assessing whether a *transferable security* referred to Article 4(1)(18)(c) of *[MiFID]* is capable of being traded in a fair, orderly and efficient manner, the *regulated market* shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:

   - (a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
   - (b) the price or other value measure of the underlying is reliable and publicly available;
   - (c) there is sufficient information publicly available of a kind needed to value the security;
   - (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;
Transferable securities

(e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.

Recital 19 to the MiFID Regulation

For the purposes of the provisions of [the MiFID Regulation] as to the admission to trading on a regulated market of a transferable security as defined in article 4(1)(18)(c) of [MiFID], [(see REC 2.12.2B EU(e))], in the case of a security within the meaning of [the PD], there should be considered to be sufficient information publicly available of a kind needed to value that financial instrument.

Article 36 of the MiFID Regulation

Units in collective investment undertakings

1. A regulated market shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [the UCITS Directive], satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the regulated market.

2. Without prejudice to [the UCITS Directive] or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a regulated market.

3. When assessing whether units in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of [MiFID] [(see REC 2.12.2A UK)], the regulated market shall take the following aspects into account:
   (a) the distribution of those units to the public;
   (b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;
Units in collective investment undertakings

(c) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

4. When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [MiFID] [(see REC 2.12.2A UK)], the regulated market shall take the following aspects into account:

(a) the distribution of those units to the public;
(b) whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund’s investment strategy or by the periodic publication of net asset value.

Article 37 of the MiFID Regulation

Derivatives

1. When admitting to trading a financial instrument of a kind listed in points 4 to 10 of Section C of Annex I to [MiFID], regulated markets shall verify that the following conditions are satisfied:

(a) the terms of the contract establishing the financial instrument must be clear and unambiguous, and enable a correlation between the price of the financial instrument and the price or other value measure of the underlying;
(b) the price or other value measure of the underlying must be reliable and publicly available;
(c) sufficient information of a kind needed to value the derivative must be publicly available;
(d) the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying;
(e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying, as well as adequate settlement and delivery procedures for the underlying.

2. Where the financial instruments concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to [MiFID], point (b) of paragraph 1 shall not apply if the following conditions are satisfied:
Derivatives

(a) the contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;

(b) the regulated market must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such financial instruments;

(c) the regulated market must ensure that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those financial instruments.

Proper information

In determining whether appropriate arrangements have been made to make relevant information available to persons engaged in dealing in specified investments admitted to trading on the UK RIE, the FCA may have regard to:

(1) the extent to which members and clients for whom they act are able to obtain information about those specified investments, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media, to make a reasonably informed judgment about the value and the risks associated with those specified investments in a timely fashion;

(2) what restrictions, if any, there are on the dissemination of relevant information to the UK RIE’s members and clients for whom they act; and
(3) whether relevant information is or can be kept to restricted groups of persons in such a way as to facilitate or encourage dealing in contravention of the Code of Market Conduct (see MAR 1).

### Own means of dissemination

UK RIEs do not need to maintain their own arrangements for disseminating news or information about specified investments (or underlying assets) to their members where they have made adequate arrangements for other persons to do so on their behalf or there are other effective and reliable arrangements for this purpose.

### Rules concerning the admission of financial instruments to trading on a multilateral trading facility

In determining whether a UK RIE has clear and transparent rules concerning the admission of financial instruments to trading on any multilateral trading facility operated by it, the FCA considers that it is reasonable that the rules be based on criteria designed to promote fair and orderly trading (see REC 2.6.2 UK). In determining whether the rules are based on such criteria, the FCA may have regard to:

1. whether there is a sufficient range of persons already holding the financial instrument (or, where relevant, the underlying asset) or interested in dealing in it to bring about adequate forces of supply and demand;

2. the extent to which there are any limitations on the persons who may hold or deal in the financial instrument, or the amounts of the financial instrument which may be held; and

3. whether the UK RIE has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that financial instrument.
2.13 Promotion and maintenance of standards

Schedule to the Recognition Requirements Regulations, Paragraph 6

(1) The [UK RIE] must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities by persons in the course of using the facilities provided by the [UK RIE].

(2) The [UK RIE] must be able and willing to cooperate by the sharing of information or otherwise, with the [FCA], with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator within the meaning of section 195 of the Act.

2.13.2 [deleted]

2.13.3 In determining whether a UK recognised body is able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities, the FCA may have regard to the extent to which the UK recognised body seeks to promote and encourage, through its rules, practices and procedures, conduct in regulated activities which is consistent with the Code of Market Conduct (see MAR 1) and with any other codes of conduct, rules or principles relating to behaviour in regulated activities which users of the UK financial system would normally expect to apply to the regulated activity and the conduct in question.

2.13.4 In assessing the ability of a UK recognised body to cooperate with the FCA and other appropriate bodies, the FCA may have regard to the extent to which the constitution and rules of the UK recognised body and its agreements with its members enable it to obtain information from members and to disclose otherwise confidential information to the FCA and other appropriate bodies.

2.13.5 In assessing the willingness of a UK recognised body to cooperate with the FCA and other appropriate bodies, the FCA may have regard to:

(1) the extent to which the UK recognised body is willing to provide information about it and its activities to assist the FCA in the exercise of its functions;

(2) the extent to which the UK recognised body is open with the FCA or other appropriate bodies in regulatory matters;
(3) how diligently the UK recognised body investigates or pursues enquiries from the FCA or other appropriate bodies; and

(4) whether the UK recognised body participates in appropriate international fora.

For the purpose of this section, 'information' includes information held about large positions held by members of a UK recognised body.
2.14 Rules and consultation

2.14.1 Schedule to the Recognition Requirements Regulations, paragraph 7

(1) The [UK RIE] must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the [UK RIE's] facilities in appropriate cases.

(3) The [UK RIE] must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 8(3) ...(or on any changes it proposes to make to those arrangements).

2.14.2 In determining whether a UK recognised body has appropriate procedures for it to make rules, for keeping its rules under review and for amending them, the FCA may have regard to:

(1) the arrangements made for taking decisions about making and amending rules in the UK recognised body, including the level at which the decisions are taken and any provision for the delegation of decisions by the governing body;

(2) the arrangements made for determining whether or not it is appropriate to consult members or other users of the UK recognised body’s facilities;

(3) the procedures for consulting members and other users of its facilities in appropriate cases; and

(4) the arrangements for notifying members (and other appropriate persons) of rule changes.

2.14.4 In determining whether a UK recognised body’s procedures include procedures for consulting users of its facilities in appropriate cases, the FCA may have regard to whether those procedures include provision for consulting users of those facilities before changes are made to any rules relating to its regulatory functions.
(2) In the FCA’s view, a UK recognised body's procedures may not need to contain provision for consulting users of its facilities before making minor changes to any rules of an administrative or commercial character.

(1) In determining whether a UK recognised body's procedures for consulting members and other users of its facilities are appropriate, the FCA may have regard to the range of persons to be consulted by the UK recognised body under those procedures.

(2) In the FCA’s view, consultation with a smaller range of persons may be appropriate where limited, technical changes to a UK recognised body's rules are proposed.

(3) In the FCA’s view, a UK recognised body's procedures may include provision to restrict consultation where it is essential to make a change to the rules without delay in order to ensure continued compliance with the recognition requirements or other obligations under the Act.

2.14.6 In determining whether a UK recognised body's procedures for consulting members and other users of its facilities are appropriate, the FCA may have regard to the extent to which the procedures include:

(1) informal discussions at an early stage with users of its facilities or appropriate representative bodies;

(2) publication to users of its facilities of a formal consultation paper which includes clearly expressed reasons for the proposed changes and an appropriately detailed assessment of the likely costs and benefits;

(3) adequate time for users of its facilities to respond to the consultation paper and for the UK recognised body to take their responses properly into account;

(4) adequate arrangements for making responses to consultation available for inspection by users of its facilities, unless the respondent requests otherwise;

(5) adequate arrangements for ensuring that the UK recognised body has proper regard to the representations received; and

(6) publication, no later than the publication of the amended rules, of a reasoned account of the UK recognised body's decision to amend its rules.
2.15 Discipline

Schedule to the Recognition Requirements Regulations, Paragraph 8

(1) The [UK RIE] must have -

(a) effective arrangements (which include the monitoring of transactions effected on the [UK RIE]) for monitoring and enforcing compliance with its rules, including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the [UK RIE];

(b) effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in paragraph 4(2)(d); and

(c) effective arrangements for monitoring transactions effected on the [UK RIE] in order to identify disorderly trading conditions.

(2) Arrangements made pursuant to sub-paragraph (1) must include procedures for -

(a) investigating complaints made to the [UK RIE] about the conduct of persons in the course of using the [UK RIE’s] facilities; and

(b) the fair, independent and impartial resolution of appeals against decisions of the [UK RIE].

(3) Where arrangements made pursuant to sub-paragraph (1) include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways -

(a) towards meeting expenses incurred by the [UK RIE] in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the [UK RIE] in relation to that breach;

(b) for the benefit of users of the [UK RIE’s] facilities;

(c) for charitable purposes.

[deleted]
In determining whether a UK recognised body has effective arrangements for monitoring and enforcing compliance with its rules (including its settlement arrangements), the FCA may have regard to:

1. the UK recognised body’s ability to:
   a. monitor and oversee the use of its facilities;
   b. assess its members’ compliance with its rules (and settlement arrangements, where appropriate);
   c. assess the significance of any non-compliance;
   d. take appropriate disciplinary action against members in breach of its rules (and settlement arrangements, where appropriate);
   e. suspend a member’s access to its facilities;
   f. refer members’ or others’ conduct to other appropriate authorities for possible action or further investigation;
   g. retain authority over a member for at least one year after he has ceased to be a member;
   h. where appropriate, enforce its rules (and settlement arrangements, where appropriate) against users (other than members) of its facilities; and
   i. take action against suppliers of services to members (for example, warehouses) whose performance or conduct may be critical to ensuring compliance with its rules (and settlement arrangements, where appropriate);

2. the position, management and resources of the departments responsible for monitoring and overseeing the use of the UK recognised body’s facilities and for enforcing compliance with its rules (and settlement arrangements, where appropriate); and

3. the arrangements made for the determination of disciplinary matters including the arrangements for disciplinary hearings and the arrangements made for appeals from the UK recognised body’s decisions in those matters.

In assessing whether the procedures made by a UK recognised body to investigate complaints about the users of its facilities are satisfactory, the FCA may have regard to:

1. whether these procedures include arrangements which enable the UK recognised body to:
   a. acknowledge complaints promptly;
   b. consider and investigate these complaints objectively, promptly and thoroughly;
   c. provide a timely reply to the complainant; and
   d. keep adequate records of complaints and investigations;

2. the arrangements made to enable a person who is the subject of a complaint to respond in an appropriate manner to that complaint; and
(3) the documentation of these procedures and the arrangements made to ensure that the existence of these procedures is brought to the attention of persons who might wish to make a complaint.

In assessing whether the arrangements include procedures for the fair, independent and impartial resolution of appeals against decisions of a UK recognised body, the FCA may have regard to at least the following factors:

(1) the appeal procedures of the UK recognised body, including the composition and roles of any appeal committees or tribunals, and their relationship to the governing body;

(2) the arrangements made to ensure prompt hearings of appeals from decisions made by the UK recognised body;

(3) the format, organisation and rules of procedure of those hearings;

(4) the arrangements made to select the persons to preside over those hearings and to serve as members of any appeal tribunal;

(5) the provision for determining whether or not such hearings should be in public;

(6) the provision made to enable an appellant to be aware of the procedure at any appeal hearing and to have the opportunity to prepare and present his case at that hearing;

(7) the provision made for an appeal tribunal to give an explanation of its decision;

(8) the provision for publicity for any appeals or for determining whether or not publicity should be given to the outcome of any appeal.

In assessing whether a UK recognised body’s arrangements include appropriate provision for ensuring the application of any financial penalties in ways described in the recognition requirement, the FCA may have regard to:

(1) the UK recognised body’s policy regarding the application of financial penalties;

(2) the arrangements made for applying that policy in individual cases;

but the FCA does not consider that it is necessary for UK recognised bodies to follow any specific policy in order to meet this recognition requirement.
Schedule to the Recognition Requirements Regulations, Paragraph 9

(1) The [UK RIE] must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions.

(2) But sub-paragraph (1) does not extend to -

(a) complaints about the content of rules made by the [UK RIE], or

(b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 8(2)(b).

(3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the [UK RIE], and for him to report on the result of his investigation to the [UK RIE] and to the complainant.

(4) The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks appropriate, that the [UK RIE] -

(a) makes a compensatory payment to the complainant,

(b) remedies the matter complained of,

or takes both of those steps.

(5) Sub-paragraph (3) is not to be taken as preventing the [UK RIE] from making arrangements for the initial investigation of a complaint to be conducted by the [UK RIE].

[deleted]

In determining whether a UK recognised body has effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its regulatory functions, the FCA may have regard to the extent to which the UK recognised body's resources and procedures enable it to:

(1) acknowledge complaints promptly;

(2) make an objective, prompt and thorough initial investigation of complaints;
(3) provide a timely reply to the complainant after that initial investigation;

(4) inform the complainant of his right to apply to the UK recognised body's complaints investigator; and

(5) keep adequate records of complaints and investigations.

In determining whether a UK recognised body's arrangements for the investigation of complaints include appropriate arrangements for the complaint to be fairly and impartially investigated by an independent person (a "complaints investigator"), the FCA may have regard to:

(1) the arrangements made for appointing (and removing) a complaints investigator, including the terms and conditions of such an appointment and the provision for remuneration of a complaints investigator;

(2) the complaints investigator's access to, and relationship with, the UK recognised body's governing body and key individuals;

(3) the arrangements made for giving complainants access to the complaints investigator;

(4) the facilities made available to the complaints investigator to enable him to pursue his investigation and prepare his report and recommendations, including access to the UK recognised body's records, key individuals and other staff (including, where appropriate suppliers, contractors or other persons to whom any functions have been outsourced and their staff); and

(5) the arrangements made for the UK recognised body to consider the complaints investigator's report and recommendations.
2.16A Operation of a multilateral trading facility

Schedule to the Recognition Requirements Regulations, Paragraph 9A

(1) [A UK RIE] operating a multilateral trading facility must also operate a regulated market.

(2) [A UK RIE] operating a multilateral trading facility must comply with those requirements of-

(a) Chapter I of Title II of [MiFID], and

(b) MiFID implementing Directive, which are applicable to a market operator ... operating such a facility.

(3) The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the Act (requirements for overseas investment exchanges and overseas clearing houses).

In determining whether a UK RIE operating a multilateral trading facility complies with those requirements of Chapter I of Title II of MiFID and the MiFID implementing Directive which are applicable to a market operator operating such a facility, the FCA will have regard to the compliance of the UK RIE with equivalent recognition requirements.
2.17 Recognition requirements relating to the default rules of UK RIEs

The text of part of regulation 3 (Interpretation) of and Parts II and IV of the Schedule to the Recognition Requirements Regulations is set out below.

2.17.1 FCA Regulation 3 (Interpretation) of the Recognition Requirements Regulations:

..."default fund" means the sum of the default fund contributions by the members or designated non-members of a [recognised investment exchange] to that exchange or by one [recognised investment exchange] to another or by the members of a [recognised clearing house] to that clearing house or by one [recognised clearing house] to another to the extent those contributions have not been returned or otherwise applied;

"default fund contribution" has the same meaning as in section 188(3A) of the Companies Act [1989];"...

2.17.2 FCA Schedule to the Recognition Requirements Regulations, Part II Paragraph 10 (Default rules in respect of market contracts)

(1) The [UK RIE] must have default rules which, in the event of a member of the [UK RIE] being or appearing to be unable to meet his obligations in respect of one or more market contracts, enable action to be taken in respect of unsettled market contracts to which he is party.

(2) The [default rules] may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more market contracts.

(3) The [default rules] must enable action to be taken in respect of all unsettled market contracts, other than those entered into for the purposes of or in connection with the provision of clearing services for the [UK RIE].

(4) Sub-paragraph (5) applies where the exchange has arrangements for transacting business with, or in relation to common members of, a [recognised clearing house] or another [recognised investment exchange].
A [UK RIE] must have [default rules] which in the event of the clearing house or the investment exchange being or appearing to be unable to meet its obligations in respect of one or more [market contracts], enable action to be taken in respect of unsettled [market contracts] to which that person is a party.

Paragraph 11 (Content of rules)

(1) This paragraph applies as regards contracts falling within section 155(2)(a) of the Companies Act [1989].

(2) The [default rules] must provide -

(a) for all rights and liabilities between those party as principal to unsettled market contracts to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the [default rules];

(b) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum; and

(c) for the certification by or on behalf of the [UK RIE] of the net sum payable or, as the case may be, of the fact that no sum is payable.

(3) The reference in sub-paragraph (2) to rights and liabilities between those party as principal to unsettled market contracts does not include rights and liabilities -

(a) in respect of margin; or

(b) arising out of a failure to perform a market contract.

(4) The [default rules] may make the same or similar provision, in relation to [designated non-members] designated in accordance with the procedures mentioned in sub-paragraph (5), as in relation to members of the [UK RIE].

(5) If such provision is made as is mentioned in sub-paragraph (4), the [UK RIE] must have adequate procedures -

(a) for designating the persons, or descriptions of person, in respect of whom action may be taken;

(b) for keeping under review the question which persons or descriptions of person should be or remain so designated; and

(c) for withdrawing such designation.

(6) The procedures must be designed to secure that -

(a) a person is not, or does not remain, designated if failure by him to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market; and
(b) a description of persons is not, or does not remain, designated if failure by a person of that description to meet his obligations in respect of one or more market contracts would be unlikely adversely to affect the operation of the market.

(7) The [UK RIE] must have adequate arrangements -

(a) for bringing a designation or withdrawal of designation to the attention of the person or description of persons concerned; and

(b) where a description of persons is designated, or the designation of a description of persons is withdrawn, for ascertaining which persons fall within that description.

Paragraph 12 (Content of rules)

(1) This paragraph applies as regards contracts falling within section 155(2)(b) or (c) of the Companies Act [1989].

(2) The [default rules] must provide -

(a) for all rights and liabilities of the defaulter under or in respect of unsettled market contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the [default rules];

(b) for the sums so payable by or to the defaulter in respect of different contracts entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act [1989] to be aggregated or set off so as to produce a net sum;

(bb) if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the investment exchange by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;

(c) for the net sum referred to in [(2)](b) or, if relevant, the net sum referred to in [(2)](bb) -

(i) if payable by the defaulter to the exchange, to be set off against -

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) to the extent (if any) that any sum remains after set off under (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;

(ii) to the extent (if any) that any sum remains after set off under (i), to be paid from such other funds, including the default fund, or resources as the exchange may apply under its default rules;
(iii) if payable by the exchange to the defaulter, to be aggregated with -

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) any default fund contribution provided by the defaulter remaining after any application of such contribution; and

(d) for the certification by or on behalf of the [UK RIE] of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(2A) In sub-paragraph (2), "margin set off agreement" means an agreement between the exchange and AP permitting any eligible position to which the Participant Member is party with the exchange and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to either the exchange or AP and/or margin to be provided to, either or both, the exchange and AP.

(2B) In sub-paragraph (2) -

"AP" means a [recognised clearing house] or another [recognised investment exchange] of whom a Participant Member is a member;

"eligible position" means any position which may be included in the set off calculation;

"Participant Member" means a person who

(a) is a member of the exchange;

(b) is a member or participant of AP; and

(c) chooses to participate, in accordance with the rules of the exchange, in such agreement.

(2C) The property, contribution, funds or resources referred to in (2)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.

(3) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the [default rules] authorising -

(a) the effecting by the [UK RIE] of corresponding contracts in relation to unsettled market contracts to which the defaulter is party;
(b) the transfer of the defaulter’s position under an unsettled market contract to another member of the [UK RIE];

(c) the exercise by the UK RIE of any option granted by an unsettled market contract.

(4) A "corresponding contract" means a contract on the same terms (except as to price or premium) as the market contract but under which the person who is the buyer under the market contract agrees to sell and the person who is the seller under the market contract agrees to buy.

(5) Sub-paragraph (4) applies with any necessary modifications in relation to a market contract which is not an agreement to sell.

(6) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled market contract does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Paragraph 12A (Content of rules)

The rules of the [UK RIE] must provide that, in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 12(2)(c)(i) or (ii).

Paragraph 13 (Notification to other parties affected)

The [UK RIE] must have adequate arrangements for ensuring that -

(a) in the case of unsettled market contracts with a defaulter acting as principal, parties to the contract are notified as soon as reasonably practicable of the default and of any decision taken under the [default rules] in relation to contracts to which they are a party; and

(b) in the case of unsettled market contracts with a defaulter acting as agent, parties to the contract and the defaulter’s principals are notified as soon as reasonably practicable of the default and of the identity of the other parties to the contract.

Paragraph 14 (Cooperation with other authorities)

The [UK RIE] must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a member of the [UK RIE] or any designated non-member or the default of a recognised clearing house or another recognised investment exchange.
The Companies Act 1989 contains provisions which protect action taken by a UK recognised body under its default rules from the normal operation of insolvency law which might otherwise leave this action open to challenge by a relevant office-holder.
Chapter 2A

Recognised Auction Platforms
2A.1 Introduction

This chapter applies to an RAP or to a UK RIE applying to become an RAP. Regulation 2 of the RAP regulations provides that an entity must have UK RIE status before it can apply for RAP status.

2A.1.1 FCA

The RAP recognition requirements must be satisfied by an RAP applicant for recognition to be granted. These requirements apply both on initial recognition and throughout the period that RAP status is held. Therefore, the term RAP in the guidance should be understood to also refer to an applicant where appropriate and where not otherwise stated.

2A.1.2 FCA

The RAP regulations apply modified provisions of the Act to an RAP. For example, an RAP is an exempt person in respect of its business as an auction platform due to the application of section 285 of the Act as modified by the RAP regulations. Similarly, section 293 of the Act is applied and modified by the RAP regulations to provide for notification rules and notification requirements in relation to RAPs.
2A.2 Method of satisfying the RAP recognition requirements

Recognised Auction Platforms Regulations, regulation 13

(1) In considering whether [an RAP] or applicant satisfies the [RAP recognition requirements], the [FCA] may-

(a) treat compliance by the [RAP] or applicant with the [recognition requirements or MiFID implementing requirements] applying to it as a [UK RIE] as conclusive evidence that the [RAP] or applicant satisfies any equivalent [RAP recognition requirements] applying to it under these [RAP regulations], taking into account any arrangements that would be necessary to meet the [RAP recognition requirements], and

(b) take into account all relevant circumstances including the constitution of the person concerned.

(2) Without prejudice to the generality of paragraph (1), [an RAP] or applicant may satisfy [RAP recognition requirements] by making arrangements for functions to be performed on its behalf by any other person.

(3) Where [an RAP] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by these [RAP regulations] on the [RAP] or applicant to satisfy the [RAP recognition requirements], but it is in addition [an RAP recognition requirement] applying to the [RAP] or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them.

The FCA will request information from an RAP or RAP applicant in order to determine whether it meets the RAP recognition requirements.
2A.3 Guidance on RAP recognition requirements

In assessing compliance with the RAP recognition requirements, the FCA will have regard to relevant guidance in REC 2 on the equivalent requirements set out in the Recognition Requirement Regulations. The FCA may also take into account compliance by the RAP or RAP applicant with the recognition requirements (see REC 2A.2.1 UK). The FCA will not make a separate assessment of compliance with the recognition requirements during the course of examining an application to become an RAP or as part of its ongoing supervision of an RAP, unless there is a specific reason to do so.

The guidance in relation to the recognition requirements in the sections of REC 2 listed in Column A of the table below applies to an RAP in relation to the equivalent RAP recognition requirements listed in Column C and (if shown) with the modifications in Column B.

Table: Guidance on RAP recognition requirements

<table>
<thead>
<tr>
<th>Column A</th>
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<tbody>
<tr>
<td>REC 2 guidance which applies to an RAP</td>
<td>Modification to REC 2 guidance for an RAP</td>
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<td>REC 2.2.2 G to REC 2.2.7 G (Relevant circumstances and Outsourcing)</td>
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<td>REC 2.4.3 G to REC 2.4.6 G (Suitability)</td>
<td>In addition to the matters set out in REC 2.4.3 G to REC 2.4.6 G, the FCA will have regard to whether a key individual has been allocated responsibility for overseeing the auction platform of the UK recognised body.</td>
<td>Reg 15</td>
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<td>REC 2.5.3 G to REC 2.5.20 G (Systems and controls and conflicts) and REC 2.5A (Guidance on Public Interest Disclosure Act: Whistleblowing)</td>
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<td>Reg 16 and 17(2)(f)</td>
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<td>Column A</td>
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<td><strong>REC 2 guidance which applies to an RAP</strong></td>
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<td>REC 2.6.26 G to REC 2.6.34 G (Safeguards for investors)</td>
<td>The <strong>FCA</strong> shall have regard to whether an <strong>RAP</strong> provides access to bid at auctions only to those persons eligible to bid under article 18 of the <em>auction regulation</em>.</td>
<td>Reg 17(2)(a) and 20</td>
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<td>REC 2.10.3 G to REC 2.10.4 G (Financial crime and market abuse)</td>
<td>REG 2.11.4 G is replaced with the following for an RAP: Where an RAP arranges for other persons to provide services for the safeguarding and administration services of assets belonging to users of its facilities, it will also need to satisfy the RAP recognition requirement in regulation 17(2)(h) of the RAP regulations (see <strong>REC 2A.2.1 UK</strong>).</td>
<td>Reg 17(2)(h)</td>
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<tr>
<td>REC 2.11.3 G to REC 2.11.4 G (Custody)</td>
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<tr>
<td>REC 2.12.11 G to REC 2.12.12 G (Availability of relevant information)</td>
<td>REC 2.12.11 G is replaced with the following for an RAP:</td>
<td>Reg 17(2)(c)</td>
</tr>
<tr>
<td></td>
<td>In determining whether appropriate arrangements have been made to make relevant information available to persons engaged in dealing in <em>emissions auction products</em> the <strong>FCA</strong> may have regard to:</td>
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<td></td>
<td>(1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those <em>emissions auction products</em> and the terms on which they will be</td>
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Reg 17(2)(c)
### Column A

*REC 2 guidance which applies to an RAP*

<table>
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<td>Modification to <em>REC 2 guidance for an RAP</em></td>
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- auctioned, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media;

(2) what restrictions, if any, there are on the dissemination of relevant information to auction bidders; and

(3) whether relevant information is, or can be, kept to restricted groups of persons in such a way as to facilitate or encourage market abuse.

**REC 2.12.12 G**

An RAP does not need to maintain its own arrangements for providing information on the terms of emissions auction products to auction bidders where it has made adequate arrangements for other persons to do so on its behalf or there are other effective and reliable arrangements for this purpose.

- **REC 2.13.3 G to REC 2.13.6 G** (Promotion and maintenance of standards)  
  Reg 18
- **REC 2.14.3 G to REC 2.14.6 G** (Rules and consultation)  
  Reg 19
- **REC 2.15.3 G to REC 2.15.6 G** (Discipline)  
  Reg 22
- **REC 2.16.3 G to REC 2.16.4 G** (Complaints)  
  Reg 23
2A.4 Power and procedure for RAP penalties and censures

Under regulation 5A (Power to impose civil penalties) of the RAP Regulations, where the FCA considers that an RAP has contravened any requirement in articles 19, 20(7), 21(1) or (2), or 54 of the auction regulation, the FCA has the power to impose a civil penalty on that RAP.

Where the FCA is entitled to impose a penalty on an RAP, it may instead publish a statement censuring it.

The provisions of the auction regulation referred to in [REC 2A.4.1 G] are directly applicable to an RAP and require it to, in summary:

1. only grant admission to bid to applicants that comply with the conditions set out in article 19 of the auction regulation, including the prerequisite that the applicants are eligible to bid in accordance with article 18 of the auction regulation;

2. require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the RAP;

3. refuse to grant admission to bid, or revoke or suspend that admission, to any person:
   a. that is not, or is no longer, eligible to bid (under article 18 of the auction regulation); does not meet, or no longer meets, the requirements of articles 18, 19 or 20 of the auction regulation; or is wilfully or repeatedly in breach of the auction regulation, the terms and conditions of its admission to bid or other related instructions or agreements; or
   b. where the RAP suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities under the auction regulation to pursue or apprehend the perpetrators of those activities; and

4. monitor the relationship with bidders admitted to bid in its auctions.

The power in regulation 5A of the RAP Regulations to impose a civil penalty or publish a statement adds to the FCA’s other supervisory powers in relation to RAPs (see [REC 4]) and its power to impose penalties on an RAP under the Money Laundering Regulations.
The FCA will use this power under the RAP Regulations where it is appropriate to do so and with regard to the relevant factors listed in DEPP 6.2.1 G. In deciding between a civil penalty or a public statement, the FCA will also have regard to the relevant factors listed in DEPP 6.4.

The FCA will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the RAP Regulations or the Money Laundering Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases.

Where the FCA uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in DEPP 6.5 to DEPP 6.5D in determining the appropriate level of financial penalty.

The FCA will also have regard to whether the person followed any of the FCA’s guidance and will not take action under regulation 5A where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.

When the FCA proposes or decides to take action against an RAP in exercise of its power in regulation 5A of the RAP Regulations, it must give the RAP a warning notice or a decision notice respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a warning notice, the RAP has a right to make representations on the FCA’s proposed decision.

Where the FCA is proposing or deciding to publish a statement censuring an RAP or impose a penalty on the RAP under regulation 5A of the RAP Regulations, the FCA’s decision maker will be the RDC. This is to ensure that the FCA’s power to censure or impose a penalty on an RAP has the same layer of separation in the decision making process, and is exercised consistently with, similar penalty and censure powers of the FCA under other legislation. The RDC will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3. An RAP that receives a decision notice under regulation 5A of the RAP Regulations may refer the matter to the Tribunal.

Sections 393 and 394 of the Act apply to notices referred to in this section. See DEPP 2.4 (Third party rights and access to FCA material).

As with cases under the Act, the FCA may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in DEPP 6.7 applies to penalties imposed under the RAP Regulations.

The FCA will apply the approach to publicity that it has outlined in EG 6.
Chapter 3

Notification rules for UK recognised bodies
3.1 Application and purpose

3.1.1 FCA

(1) The notification rules in this chapter, which are made under section 293 of the Act (Notification requirements), apply to all UK recognised bodies.

(2) The rules relating to the form and method of notification in § REC 3.2 also apply to overseas recognised bodies.

3.1.2 FCA

The notification rules for overseas recognised bodies are set out in § REC 6. The guidance set out at § REC 3.3 in relation to the waiving and modification of notification rules also applies to the notification rules in this chapter and to the notification rules in § REC 6.

3.1.3 FCA

The notification rules in this chapter are in addition to the requirements on UK RIEs to give notice or information to the FCA and if applicable, the Bank of England under sub-sections 293(5) and (6) of the Act.

3.1.3A FCA

The notification rules in this chapter which apply to an RAP are without prejudice to notification rules which apply to a UK RIE which operates the RAP. However, a UK RIE which operates an RAP may make a single notification where a notification is required both in its capacity as a UK RIE and an RAP.

3.1.4 FCA

The notification rules in this chapter are made by the FCA in order to ensure that it is provided with notice of events and information which it reasonably requires for the exercise of its functions under the Act.
3.2 Form and method of notification

Form of notification

Where a recognised body is required to give any notice or information under any notification rule, it may do so (unless that rule expressly provides otherwise) orally or in writing, whichever is the more appropriate in the circumstances, but, where it gives notice or information orally, it must confirm that notice or information in writing promptly.

Method of notification

Unless otherwise stated in the notification rule, a written notification required from a recognised body under any notification rule must be:

(1) given to, or addressed for the attention of, the recognised body's usual supervisory contact at the FCA;

(2) delivered to the FCA by one of the methods in REC 3.2.3 R.

Table Methods of notification

<table>
<thead>
<tr>
<th>Method of delivery</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Post to the address in REC 3.2.4 R</td>
</tr>
<tr>
<td>(2) Leaving the notification at the address in REC 3.2.4 R and obtaining a time-stamped receipt</td>
</tr>
<tr>
<td>(3) Electronic mail to an address for the recognised body's usual supervisory contact at the FCA and obtaining an electronic confirmation of receipt</td>
</tr>
<tr>
<td>(4) Hand delivery to the recognised body's usual supervisory contact at the FCA</td>
</tr>
<tr>
<td>(5) Fax to a fax number for the recognised body's usual supervisory contact at the FCA, provided that the FCA receives a copy of the notification by one of methods (1) - (4) in this table within five business days after the date of the faxed notification</td>
</tr>
</tbody>
</table>
The address for a written notification to the FCA is:

The Financial Conduct Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

Timely notification

If a notification rule requires notification within a specified period:

(1) the recognised body must give the notification so as to be received by the FCA no later than the end of that period; and

(2) if the end of that period falls on a day which is not a business day, the notification must be given so as to be received by the FCA no later than the first business day after the end of that period.

Service of Notice Regulations

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) do not apply to notifications required under the notification rules in this chapter and in ■ REC 6 because of the specific rules in this section.
3.3 Waivers

**Statutory power**

Under section 294 of the Act (Modification or waiver of rules), the FCA may, on the application or with the consent of a recognised body (including an ROIE), direct that any notification rule is not to apply to the body or is to apply with such modifications as may be specified in the waiver.

A waiver given under section 294 of the Act may be made subject to conditions.

Under section 294(4) of the Act, before the FCA may give a waiver of notification rules, it must be satisfied that:

1. compliance by the recognised body with those notification rules, or with those rules as unmodified, would be unduly burdensome or would not achieve the purpose for which those rules were made; and
2. the waiver would not result in undue risk to persons whose interests those rules are designed to protect.

**Applications**

Where a recognised body wishes to make an application to the FCA for a waiver of a notification rule, it should in the first instance inform its usual supervisory contact at the FCA.

There is no application form, but applicants should make their application formally and in writing and in accordance with any direction the FCA may make under section 294(2) of the Act. Each application should set out at least:

1. full particulars of the waiver which is requested;
2. the reason why the recognised body believes that the criteria set out in section 294(4) (and described in REC 3.3.3 G) would be met, if this waiver were granted; and
3. where the recognised body believes that these criteria would be met if the FCA gave a waiver under section 294 subject to any condition, particulars of the kind of condition contemplated.
The FCA may request further information from the applicant, before deciding whether to give a waiver under section 294 of the Act.

### Waivers

Any waiver given by the FCA under section 294 of the Act will be made in writing, stating:

1. the name of the recognised body in respect of which the waiver is made;
2. the notification rules which are to be waived or modified in respect of that body;
3. where relevant, the manner in which any rule is to be modified;
4. any condition or time limit to which the waiver is subject; and
5. the date from which the waiver is to take effect.

Where the FCA considers that it will not give the waiver which has been applied for, the FCA will give reasons to the applicant for its decision. The FCA will endeavour, where practicable, to inform an applicant in advance where it seems that an application is likely to fail unless it is amended or expanded, so that the applicant will have the opportunity to make any necessary amendments or additions before the application is considered.

Where the FCA wishes to give a waiver under section 294 of the Act with the consent of a recognised body (rather than on the application of a recognised body), the FCA will correspond or discuss this with that body in order to agree an appropriate waiver.

### Reviews of waivers

The FCA will periodically review any waiver it has given. The FCA has the right to revoke a waiver under section 294(6) of the Act. This right is likely to be exercised in the event of a material change in the circumstances of the recognised body or in any fact on the basis of which the waiver was given.
3.4 Key individuals and internal organisation

Purpose

3.4.1 The purpose of REC 3.4 is to enable the FCA to monitor changes in the arrangements a UK recognised body makes for the carrying out of its relevant functions or for overseeing the work of key individuals or departments responsible for its relevant functions.

Key individuals

3.4.2 [deleted]

3.4.2A Where, in relation to a UK RIE a proposal has been made to appoint or elect a person as a key individual, that UK RIE must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this rule in REC 3.4.4A R to the FCA.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

3.4.2B Where, in relation to a UK RIE a person has resigned as, or has ceased to be, a key individual, that UK RIE must immediately give notice of that event, and give the name of the person.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

3.4.3 (1) Key individuals include the persons who, under the operational or managerial arrangements of the UK recognised body, are appointed to manage the departments responsible for carrying out its relevant functions, whether or not they are members of its governing body. A person appointed to carry out specific tasks, such as to conduct a particular investigation into a specific set of facts, would not usually be a key individual.

(2) A key individual need not be an employee of a UK recognised body. For example, an employee of an undertaking in the same group or a self-employed contractor of a UK recognised body might be a key individual, depending on the role he plays in that body.

(3) A department of a UK recognised body should be regarded as responsible for carrying out a relevant function if it is responsible for any activity or activities which form a significant part of a relevant function or which make a significant contribution to the performance of a relevant function.
(4) The FCA does not need to be notified where minor changes are made to the responsibilities of a *key individual*, but where a major change in responsibilities is made which amounts to a new appointment, the FCA should be notified under REC 3.4.2A R.

### 3.4.4

The following information is specified for the purposes of REC 3.4.2A R:

1. that person's name;
2. his date of birth;
3. a description of the responsibilities which he will have in the post to which he is to be appointed or elected, including for a UK RIE which operates an RAP where the person has responsibilities both in the UK RIE and RAP, a description of the responsibilities he has in respect of each body.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

### Standing committees

Where the governing body of a UK recognised body delegates any of its functions (which relate to that UK recognised body's relevant functions) to a standing committee, or appoints a standing committee to manage or oversee the carrying out of any of that UK recognised body's relevant functions, that UK recognised body must immediately notify the FCA of that event and give the FCA the following information:

1. the names of the members of that standing committee; and
2. the terms of reference of that standing committee (including a description of any powers delegated to that committee and any conditions or limitations placed on the exercise of those powers).

Where:

1. there is any change in the composition or the terms of reference of any standing committee referred to in REC 3.4.5 R; or
2. any such committee is dissolved;

the UK recognised body must immediately notify the FCA of that event and give particulars of any change referred to in (1) to the FCA.

### Standing committees

(1) Standing committees include permanent committees with executive, supervisory, policy-making or rule-making responsibilities. Committees appointed for particular tasks or committees established for purely consultative or advisory purposes would not usually be considered to be standing committees.
(2) Committees which include persons who are not members of the governing body can be standing committees.
3.5 Disciplinary action and events relating to key individuals

Disciplinary action

Where any key individual of a UK recognised body:

1. is the subject of any disciplinary action because of concerns about his alleged misconduct;
2. resigns as a result of an investigation into his alleged misconduct; or
3. is dismissed for misconduct;

that body must immediately give the FCA notice of that event, and give the information specified for the purposes of this rule in REC 3.5.2 R.

The following information is specified for the purposes of REC 3.5.1 R:

1. the name of the key individual and his responsibilities within the UK recognised body;
2. details of the acts or alleged acts of misconduct by that key individual; and
3. details of any disciplinary action which has been or is proposed to be taken by that body in relation to that key individual.

Other events

Where a UK recognised body becomes aware that any of the following events has occurred in relation to a key individual, it must immediately give the FCA notice of that event:

1. a petition for bankruptcy is presented (or similar or analogous proceedings under the law of a jurisdiction outside the United Kingdom are commenced) against that key individual; or
2. a bankruptcy order (or a similar or analogous order under the law of a jurisdiction outside the United Kingdom) is made against him; or
(3) he enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the United Kingdom) with his creditors.
3.6 Constitution and governance

Where a UK recognised body is to circulate any notice or other document proposing any amendment to its memorandum or articles of association (or other similar agreement or document relating to its constitution) to:

(1) its shareholders (or any group or class of them); or

(2) its members (or any group or class of them); or

(3) any other group or class of persons which has the power to make that amendment or whose consent or approval is required before it may be made;

that UK recognised body must give notice of that proposed amendment, and give the information specified for the purposes of this rule in REC 3.6.2 R to the FCA, at the same time as that notice or document is circulated.

The following information is specified for the purposes of REC 3.6.1 R:

(1) the proposed amendments referred to in REC 3.6.1 R;

(2) the reasons for the proposal; and

(3) a description of the group or class of persons to whom the proposal is to be circulated.

A UK recognised body which is incorporated as a company in the United Kingdom will, in many circumstances, be able to comply with REC 3.6.1 R by providing a copy of the notice of special resolution issued to its shareholders.

Where a UK recognised body makes an amendment to its memorandum or articles of association (or other similar agreement or document relating to its constitution), that UK recognised body must immediately give the FCA notice of that event, and give written particulars of that amendment and of the date on which it is to become or became effective.
A UK recognised body which is incorporated as a company in the United Kingdom will, in many circumstances, be able to comply with REC 3.6.4 R by providing a copy of the special resolution effecting the amendment.

Where any change is made to an agreement which relates to the constitution or governance of a UK recognised body:

1. between that UK recognised body and another person; or
2. between the owners of that UK recognised body; or
3. between the owners of that UK recognised body and another person; or
4. between other persons;

that UK recognised body must give the FCA notice of that event as soon as it is aware of it, and give written particulars of that change and of the date on which it is to become or became effective.

The purpose of REC 3.6.6 R is to ensure that the FCA is informed of changes to agreements which specify the arrangements by which a UK recognised body will be governed or by which important decisions will be taken within that body. It is not intended to cover any agreement by which someone is appointed to be a key individual or which covers the terms and conditions of service in such an appointment.
3.7 Auditors

Where the auditors of a UK recognised body cease to act as such, that UK recognised body must immediately give the FCA notice of that event, and the following information:

(1) whether the appointment of those auditors expired or was terminated;

(2) the date on which they ceased to act; and

(3) if it terminated, or decided not to renew, their appointment, its reasons for taking that action or decision.

Where a UK recognised body appoints new auditors, that body must immediately give the FCA notice of that event, and the following information:

(1) the name and business address of those new auditors; and

(2) the date of their appointment as auditors.
3.8 Financial and other information

A UK recognised body must give the FCA:

(1) a copy of its annual report and accounts; and

(2) a copy of the consolidated annual report and accounts:
   (a) of any group in which the UK recognised body is a subsidiary undertaking; or
   (b) (if the UK recognised body is not a subsidiary undertaking in any group) of any group of which the UK recognised body is a parent undertaking;

no later than the time specified for the purpose of this rule in RC 3.8.2 R.

The time specified for the purpose of RC 3.8.1 R is the latest of:

(1) four months after the end of the financial year to which the document which is to be given to the FCA relates; or

(2) the time when the documents described in RC 3.8.1 R (1) or RC 3.8.1 R (2)(b) are sent to the members or shareholders of the UK recognised body; or

(3) the time when the document described in RC 3.8.1 R (2)(a) are sent to the shareholders in a parent undertaking of the group to which that document relates.

Where an audit committee of a UK recognised body has prepared a report in relation to any period or any matter relating to any relevant function of that UK recognised body, the UK recognised body must immediately give the FCA a copy of that report.

A UK recognised body must give the FCA a copy of:

(1) its quarterly management accounts; or

(2) its monthly management accounts;
within one month of the end of the period to which they relate.

A UK recognised body is not required to provide quarterly and monthly management accounts in respect of the same period, but management accounts (whether quarterly or monthly) should be submitted for all periods. A UK recognised body may choose whichever method is the more suitable for it, but where it intends to change from providing monthly to quarterly management accounts (or from quarterly to monthly management accounts), it should inform the FCA of that fact.

A UK recognised body must give the FCA:

1. a statement of its anticipated income, expenditure and cashflow for each financial year; and
2. an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

before the beginning of that financial year.

Where the accounting reference date of a UK recognised body is changed, that body must immediately give notice of that event to the FCA and inform it of the new accounting reference date.
3.9 Fees and incentive schemes

3.9.1 The purpose of REC 3.9.2 R is to enable the FCA to obtain information on changes to standard tariffs for matters such as membership and trading and of any scheme introduced by the UK recognised body for rebating or waiving fees or charges. A UK recognised body is not required to inform the FCA of fees or charges for which the UK recognised body does not charge according to a standard tariff.

3.9.2 A UK recognised body must give the FCA a summary of:

1. any proposal to change the fees or charges levied on its members (or any group or class of them), at the same time as the proposal is communicated to those members; and

2. any such change, no later than the date when it is published or notified to those members.
3.10 Complaints

Where a UK recognised body's complaints investigator has investigated a complaint arising in connection with the performance of, or failure to perform, any of its regulatory functions, and that complaints investigator has made a recommendation in respect of that complaint that the UK recognised body should:

(1) make a compensatory payment to any person; or

(2) remedy the matter which was the subject of that complaint;

the UK recognised body must immediately notify the FCA of that event, and give the FCA a copy of the complaints investigator's report and particulars of his recommendations as soon as that report or those recommendations are available to it.
3.11 Insolvency events

On:

(1) the presentation of a petition for the winding up of a UK recognised body (or the commencement of any similar or analogous proceedings under the law of a jurisdiction outside the United Kingdom); or

(2) the appointment of a receiver, administrator, liquidator, trustee or sequestrator of assets of that body (or of any similar or analogous appointment under the laws of a jurisdiction outside the United Kingdom); or

(3) the making of a voluntary arrangement by that body with its creditors (or of any similar or analogous arrangement under the law of a jurisdiction outside the United Kingdom);

that body must immediately give the FCA notice of that event.
3.12 Legal proceedings

If any civil or criminal legal proceedings are instituted against a UK recognised body, it must, unless REC 3.12.2 R applies, immediately give notice of that event and give the following information to the FCA:

1. in the case of civil proceedings, the name of the claimant, particulars of the claim, the amount of damages and any other remedy sought by the claimant, and particulars of any allegation that any act or omission of that body was in bad faith; and

2. in the case of criminal proceedings, particulars of the offence with which that body is charged.

A UK recognised body is not required to give notice of civil legal proceedings or information about them to the FCA under REC 3.12.1 R, where:

1. the amount of damages claimed would not significantly affect that UK recognised body's financial resources, if the claim were successful;

2. the claim would not have a significant adverse effect on the reputation and standing of that body, if that claim were successful; and

3. the claim does not relate to that body's regulatory functions.
3.13 Delegation of relevant functions

3.13.1 FCA

(1) The purpose of REC 3.13 is to enable the FCA to monitor any significant instances where UK recognised bodies outsource their functions to other persons (as permitted under Regulation 6 of the Recognition Requirements Regulations or, in relation to an RAP, under regulation 13 of the RAP regulations. See REC 2.2 and REC 2A.2).

(2) The FCA does not need to be notified of every instance of outsourcing by a UK recognised body, but only where an activity or activities which form a significant part of a relevant function or which make a significant contribution to the performance of a relevant function are outsourced.

3.13.2 FCA

Where a UK recognised body makes an offer or agrees to delegate any of its relevant functions to another person, it must immediately give the FCA notice of that event, and:

(1) inform the FCA of the reasons for that delegation or proposed delegation;

(2) inform the FCA of the reasons why it is satisfied that it will continue to meet the recognition requirements or (for an RAP) RAP recognition requirements following that delegation;

(3) where it makes such an offer by issuing a written invitation to tender, give the FCA a copy of that invitation to tender; and

(4) where it makes such an agreement, give the FCA a copy of that agreement.

3.13.3 FCA

A UK recognised body must immediately give the FCA notice, where it makes an offer or agrees to undertake any relevant function of another UK recognised body.
3.14 Products, services and normal hours of operation

Purpose

The purpose of REC 3.14 is to ensure that the FCA is informed of planned changes to the services a UK recognised body intends to provide and of the normal hours of operation of those services. Unplanned suspensions of those services, unplanned changes in hours of operation and events causing a UK recognised body to be unable to provide those services should be notified to the FCA under the rules in REC 3.15.

Products and services

Where a UK RIE proposes to admit to trading (or to cease to admit to trading) by means of its facilities:

1. a specified investment (other than a security or an option in relation to a security); or
2. a type of security or a type of option in relation to a security;

it must give the FCA notice of that event, and the information specified for the purposes of this rule in REC 3.14.6 R to the FCA, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

When a UK RIE removes a financial instrument from trading on a regulated market, it must immediately give the FCA notice of that event and relevant information including particulars of that financial instrument and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of MiFID]

Where a UK recognised body proposes to provide (or to cease to provide) clearing facilitation services in respect of:

1. a specified investment (other than a security or an option in relation to a security); or
2. a type of security or a type of option in relation to a security;
it must give the FCA notice of that event and the information specified for the purposes of this rule in §REC 3.14.6 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14.4 [deleted]

3.14.5 Securities falling within the same article in Part III of the Regulated Activities Order which may be given the same generic description (for example, shares admitted to the UK official list) will normally be regarded as being of the same type. Options in relation to the same type of security will normally be regarded as being options of the same type.

3.14.6 The following information is specified for the purposes of §REC 3.14.2 R and §REC 3.14.3 R:

(1) a description of the specified investment to which the proposal relates;

(2) where that specified investment is a derivative, the proposed terms of that derivative; and

(3) in the case of a UK RIE which is admitting that specified investment to trading, the name of any RCH which will provide clearing services in respect of that specified investment under an agreement with that UK RIE.

3.14.7 Where:

(1) a UK RIE proposes to amend the standard terms of any derivative admitted to trading by means of its facilities; or

(2) a UK RIE proposes to amend the standard terms relating to any derivative in respect of which it provides clearing facilitation services;

it must give the FCA notice of that event, and written particulars of those proposed amendments, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14.8 Where a UK recognised body proposes to make (or to cease to make) arrangements for the safeguarding and administration of assets belonging to any other person (other than an undertaking in the same group), that recognised body must give the FCA notice of that event, and the information specified for the purposes of this rule in §REC 3.14.9 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).
The following information is specified for the purposes of REC 3.14.8 R:

(1) a description of the assets (or types of assets) to which the proposal relates; and

(2) the date or dates on which arrangements referred to in REC 3.14.8 R will be made (or cease to be made).

The FCA does not need to be notified of proposals to offer (or to withdraw offers of) safeguarding and administration services for individual assets of the same type. Specified investments (other than securities) falling within the same article in Part III of the Regulated Activities Order will normally be regarded as being of the same type. Securities falling within the same article in Part III of the Regulated Activities Order which may be given the same generic description (for example, shares admitted to the UK official list) will also normally be regarded as being of the same type.

Hours of operation

Where a UK recognised body proposes to change its normal hours of operation or (for RAPs) the timing, frequency or duration of its bidding windows, it must give the FCA notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its members or shareholders, or any group or class of them.
3.14A Operation of a regulated market or MTF

Purpose

3.14A.1 The purpose of REC 3.14A is to ensure that the FCA is informed of planned changes to a UK RIE markets and their regulatory status as either a regulated market or MTF.

Operation of a regulated market

3.14A.2 Where a UK RIE proposes to operate a new regulated market or close an existing regulated market it must give the FCA notice of that event and the information specified for the purposes of this rule in REC 3.14A.3 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

The following information is specified for the purposes of REC 3.14A.2 R:

(1) where the UK RIE proposes to operate a new regulated market:
   (a) a description of the regulated market; and
   (b) a description of the specified investments which will be admitted to trading on that regulated market.

(2) where the UK RIE proposes to close a regulated market, the name of that regulated market.

Operation of an MTF

3.14A.4 Where a UK RIE proposes to operate a new MTF or close an existing MTF it must give the FCA notice of that event and the information specified for the purposes of this rule in REC 3.14A.5 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

The following information is specified for the purposes of REC 3.14A.4 R:

(1) where the UK RIE proposes to operate a new MTF:
   (a) a description of the MTF; and
(b) a description of the specified investments which will be admitted to trading on that MTF.

(2) where the UK RIE proposes to close a MTF, the name of that MTF.

Operation of a recognised auction platform

If a UK RIE proposes to operate an RAP, it will need to make a separate application to be recognised as an RAP (see REC 5 (Applications)).
3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1 FCA

(1) The purpose of REC 3.15.2 R to REC 3.15.5 G is to enable the FCA to obtain information where a UK recognised body decides to suspend the provision of its services in relation to particular investments or (for an RAP) decides to cancel an auction. Planned changes to the provision of services should be notified to the FCA under REC 3.14.

(2) REC 3.15.6 R to REC 3.15.7 R provide for notification to the FCA where a UK recognised body is unable to operate or provide its facilities for reasons outside its control or where it decides to extend its hours of operation in an emergency.

(3) REC 3.15.8 R to REC 3.15.9 G provide for notification to the FCA where an RAP has to cancel an auction in specified circumstances.

Suspension of services

3.15.2 FCA

Where, for any reason, an RIE:

(1) suspends trading in any derivative (other than an option in relation to a security), in any type of security or in any type of option in relation to a security; or

(2) temporarily calls a trading halt in respect of any type of security or in any type of option in relation to a security;

it must immediately give the FCA notice of that event, particulars of that derivative, type of security or type of option in relation to a security, as the case may be, and the reasons for the action taken.

3.15.2A FCA

When a UK RIE suspends trading on a regulated market in any financial instrument, it must immediately give the FCA notice of that event and relevant information including particulars of that financial instrument and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of MiFID]

3.15.3 FCA

Where a UK recognised body suspends providing clearing facilitation services generally in respect of any derivative (other than an option in
relation to a security), type of security or type of option in relation to a security, it must immediately give the FCA notice of that event, particulars of that derivative, type of security or type of option in relation to a security, as the case may be, and the reasons for the action taken.

Where a UK recognised body suspends any arrangements it makes for the safeguarding and administration of any type of asset belonging to any other person (other than an undertaking in the same group), that UK recognised body must immediately give the FCA notice of that event, particulars of that type of asset and the reasons for the action taken.

Specified investments (other than securities or options in relation to securities) falling within the same article in Part III of the Regulated Activities Order will normally be regarded as being assets of the same type. Securities falling within the same article in Part III of the Regulated Activities Order which may be given the same generic description (for example, shares admitted to the UK official list) will normally be regarded as being of the same type. Options in relation to the same type of security will normally be regarded as being options of the same type.

Inability to operate facilities

Where, because of the occurrence of any event or circumstances, a UK recognised body is unable to operate any of its facilities within its normal hours of operation, it must immediately give the FCA notice of that inability and inform the FCA:

(1) which facility it is unable to operate;

(2) what event or circumstance has caused it to become unable to operate that facility within those hours; and

(3) what action, if any, it is taking or proposes to take to enable it to recommence operating that facility.

Extension of hours of operation

Where, because of the occurrence of any event or circumstances, a UK recognised body extends its hours of operation, it must immediately give the FCA notice of that event, and inform the FCA:

(1) what event or circumstance has caused it to do so;

(2) the new hours of operation; and

(3) the date on which it expects to revert to its normal hours of operation.
Recognised auction platforms - cancellation of auctions

Where an RAP has to cancel an auction in the circumstances set out in articles 7(5) or 7(6) of the auction regulation, it must immediately give the FCA notice of that cancellation.

Under article 7(7) of the auction regulation, an RAP is required to notify the FCA of:

1. the methodology used to determine the application of article 7(6) of the auction regulation; and

2. modifications to that methodology made between bidding windows.
3.16 Information technology systems

3.16.1 The purpose of REC 3.16 is to ensure that the FCA receives a copy of the UK recognised body's plans and arrangements for ensuring business continuity if there are major problems with its computer systems. The FCA does not need to be notified of minor revisions to, or updating of, the documents containing a UK recognised body's business continuity plan (for example, changes to contact names or telephone numbers).

3.16.2 Where a UK recognised body changes any of its plans for action in the event of a failure of any of its information technology systems resulting in disruption to the operation of its facilities, it must immediately give the FCA notice of that event, and a copy of the new plan.

3.16.3 Where any reserve information technology system of a UK recognised body fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its facilities during its normal hours of operation, that body must immediately give the FCA notice of that event, and inform the FCA:

(1) what action that UK recognised body is taking to restore the operation of the reserve information technology system; and

(2) when it is expected that the operation of that system will be restored.
3.17 Inability to discharge regulatory functions

Where, because of the occurrence of any event or circumstances, a UK recognised body is unable to discharge any regulatory function, it must immediately give the FCA notice of its inability to discharge that function, and inform the FCA:

(1) what event or circumstance has caused it to become unable to do so;

(2) which of its regulatory functions it is unable to discharge; and

(3) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that regulatory function.
3.18 Membership

The purpose of REC 3.18 is to enable the FCA to monitor changes in the types of member admitted by UK recognised bodies and to ensure that the FCA has notice of foreign jurisdictions in which the members of UK recognised bodies are based. UK recognised bodies may admit persons who are not authorised persons or persons who are not located in the United Kingdom, provided that the recognition requirements (or (for RAPs) RAP recognition requirements) continue to be met.

REC 3.18.2 R focuses on the admission of persons who are not authorised persons (whether or not they are located in the United Kingdom) and on whether the specific recognition requirement or (for an RAP) RAP recognition requirement relating to access to facilities can still be met. REC 3.18.3 R focuses on the admission of members from outside the UK and whether all relevant recognition requirements (or (for an RAP) RAP recognition requirements) can be met.

The information required under REC 3.18 is relevant to the FCA’s supervision of the UK recognised body’s obligations in relation to the enforceability of compliance with the UK recognised body’s rules. It is also relevant to the FCA’s broader responsibilities concerning integrity of the UK financial system and, in particular, its functions in relation to market abuse and financial crime. It may also be necessary in the case of members based outside the United Kingdom to examine the implications for the enforceability of default rules or collateral and the settlement of transactions, and thus the ability of the UK RIE to continue to meet the recognition requirements. It follows that the admission of a member from outside the United Kingdom who is not an authorised person could require notification under both REC 3.18.2 R and REC 3.18.3 R, although a single report from the UK recognised body covering both notifications would be acceptable to the FCA.

Where a UK recognised body admits a member who is not an authorised person of a type of which, immediately before that time, that UK recognised body had not admitted to membership, it must immediately give the FCA notice of that event, and:

1. a description of the type of person whom it is admitting to membership;
2. (in relation to a UK RIE) particulars of its reasons for considering that, in admitting that type of person to

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membership, it is able to continue to satisfy the recognition requirement in paragraph 4(2)(a) of the Schedule to the Recognition Requirements Regulations which applies to it; and

(3) (in relation to an RAP) particulars of its reasons for considering that, in admitting that type of person to membership, it is able to continue to satisfy the RAP recognition requirement in regulation 20 (Access to auctions) which applies to it.

Where a UK recognised body admits for the first time a member whose head or registered office is in a jurisdiction from which that UK recognised body has not previously admitted members, it must immediately give the FCA notice of that event, and:

(1) the name of that jurisdiction;

(2) the name of any regulatory authority in that jurisdiction which regulates that member in respect of activities relating to specified investments or (for an RAP) relating to emissions auction products; and

(3) particulars of its reasons for considering that, in admitting a member from that jurisdiction to membership, it is able to continue to satisfy the recognition requirements or (for an RAP) the RAP recognition requirements which apply to it.

A type of member means the description of any group of members to whom the same generic description could be applied. For example, the description of any group of members separately identified or defined in the rules might constitute a type of member for the purposes of this section.
3.19 Investigations

Where a UK recognised body becomes aware that a person has been appointed by any regulatory body (other than the FCA or a UK recognised body) to investigate:

1. any business transacted by means of its facilities or
2. any aspect of the clearing facilitation services which it provides;

it must immediately give the FCA notice of that event.

A UK recognised body need not give the FCA notice of:

1. routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of 'theme visits'; or
2. routine requests for information; or
3. investigations into the conduct of members of the UK recognised body or of other users of its facilities where the use of its facilities is a small or incidental part of the subject matter of the investigation.
3.20 Disciplinary action relating to members

Where a UK recognised body has taken any disciplinary action against any member or any employee of a member, in respect of a breach of a rule relating to the carrying on by the UK recognised body of any of its regulatory functions, that body must immediately notify the FCA of that event, and give:

(1) the name of the person concerned;

(2) details of the disciplinary action taken by the UK recognised body; and

(3) the UK recognised body's reasons for taking that disciplinary action.

Where an appeal is lodged against any disciplinary action referred to in REC 3.20.1 R, the UK recognised body must immediately give the FCA notice of that event, and:

(1) the name of the appellant and the grounds on which the appeal is based, immediately; and

(2) the outcome of the appeal, when known.
3.21 Criminal offences and civil prohibitions

Where a UK recognised body has evidence tending to suggest that any person has:

(1) been carrying on any regulated activity in the United Kingdom in contravention of the general prohibition; or

(2) been engaged in market abuse; or

(3) committed a criminal offence under the Act or subordinate legislation made under the Act; or

(4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (Insider dealing); or

(5) committed a criminal offence under the Money Laundering Regulations;

it must immediately give the FCA notice of that event, and full details of that evidence in writing.

[Note: Article 26(2), first sentence (part) and Article 43(2), first sentence (part) of MiFID. The rest of Article 26(2), first sentence (in so far as it relates to market operators operating an MTF) and Article 43(2), first sentence of MiFID is implemented by REC 3.25.1 R]
3.22 Restriction of, or instruction to close out, open positions

3.22.1 Where a UK RIE decides to:

(1) restrict the open position on any of the contracts of a member; or

(2) issue instructions to a member to close out its positions on any contracts;

that UK RIE must immediately give the FCA notice of that event, and the member’s name, the nature and size of any position to be restricted or closed out and the reasons for the UK RIE’s decision.

3.22.2 Where an RAP proposes to impose a maximum bid size or take other remedial measures to mitigate risks of market abuse, financial crime or anti-competitive behaviour in accordance with article 57 of the auction regulation, the RAP must give the FCA notice of that event and details of the remedial measures proposed.
3.23 Default

Where a UK RIE decides to put a member into default, it must immediately give notice of that event, and give the following information to the FCA, at the same time as that decision is communicated to that member or to any other member (or group or class of them) of that body:

(1) the name of the member and (where relevant) the class of membership;

(2) the reasons for that decision; and

(3) the names of any other exchange, clearing house or auction platform on which, to the best of that UK RIE’s knowledge, that member clears business or transacts for, or in respect of, its clients.
3.24 Transfers of ownership

3.24.1 When a UK RIE becomes aware of a transfer of ownership of the UK RIE which gives rise to a change in the persons who are in a position to exercise significant influence over the management of the UK RIE or (in the case of a UK RIE that is also an RAP) over the management of the RAP, whether directly or indirectly, it must immediately notify the FCA of that event, and:

   (1) give the name of the person(s) concerned; and

   (2) give details of the transfer.

[Note: Article 38(2)(b) of MiFID]

3.24.2 The FCA may regard a person who falls within any of the cases in section 301(B)(2) of the Act as being in a position to exercise significant influence.
3.25 Significant breaches of rules and disorderly trading conditions

A UK RIE and an RAP must immediately notify the FCA of:

1. significant breaches of its rules; or
2. disorderly trading conditions on any of its markets or auctions.

[Note: Article 26(2), first sentence (part) and Article 43(2), first sentence (part) of MiFID. The rest of Article 26(2), first sentence (in so far as it relates to market operators operating an MTF) and Article 43(2), first sentence of MiFID is implemented by REC 3.21.1 R (2)]
3.26 Proposals to make regulatory provision

Statutory power

3.26.1 FCA
Under section 300B(1) of the Act (Duty to notify proposal to make regulatory provision), a UK RIE that proposes to make any regulatory provision must give written notice of the proposal to the FCA without delay.

3.26.2 FCA
Under section 300B(2) of the Act, the FCA may, by rules under section 293 (Notification requirements):

(1) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in section 300B(1) does not apply, or

(2) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.

3.26.3 FCA
Under section 300B(3) of the Act, the FCA may also by rules under section 293:

(1) make provision as to the form and contents of the notice required, and

(2) require the UK recognised body to provide such information relating to the proposal as may be specified in the rules or as the FCA may reasonably require.

Disapplication of duty to notify proposal to make regulatory provision

3.26.4 FCA
The duty in section 300B(1) of the Act does not apply to any of the following:

(1) any regulatory provision which is required under EU law or any enactment or rule of law in the United Kingdom; or

(2) (a) the specification of the standard terms of any derivative which a UK RIE proposes to admission to trading, or the amendment of the standard terms of any derivative already admitted to trading; or

(b) the specification or any amendment of standard terms relating to the provision of clearing facilitation services for any derivative; or
(c) the specification or any amendment of operating procedures which are reasonably consequential on any regulatory provision falling within (a) or (b); or

(3) any regulatory provision which is expressed to have effect for no longer than three months which is made by a UK recognised body in response to an emergency event (including, without limitation, a war, terrorist attack or labour strike); or

(4) any regulatory provision which does not impose a requirement (including any obligation or burden) on persons affected (directly or indirectly) by it; or

(5) any other regulatory provision which has not been excluded under (1), (2), (3) or (4) other than any such provision which (taken together with any other regulatory provision not otherwise the subject of a notice under section 300B(1) of the Act):

(a) materially increases disclosure, reporting or corporate governance requirements imposed on any person (whether directly or indirectly); or

(b) imposes a material limitation affecting any person (whether directly or indirectly including, without limitation, through an amendment to fees or charges) on the type or nature of financial instruments which may be listed or the subject of admission to trading on the facilities operated by the UK RIE proposing to make the regulatory provision; or

(c) materially limits access to, or use by, any person (whether directly or indirectly including, without limitation, through an amendment to fees or charges) of the facilities operated by the UK recognised body proposing to make the regulatory provision or

(d) materially adds to the circumstances in which any person (whether directly or indirectly) may be liable to penalties or other sanctions or have liability in damages.

**Notice to the FCA**

A notice under section 300B(1) of the Act of a proposal to make a regulatory provision must be in writing and state expressly that it is a notice for the purpose of that section. To be effective, a notice must:

(1) contain full particulars of the proposal to make a regulatory provision which is the subject of that notice; and

(2) either be accompanied by sufficient supporting information to enable the FCA to assess the purpose and effect of the proposed
regulatory provision or refer to such information in circumstances where such information has already been provided to the FCA.

In determining whether a UK RIE has provided sufficient supporting information, the FCA may have regard to the extent to which the information includes:

1. clearly expressed reasons for the proposed regulatory provision; and
2. an appropriately detailed assessment of the likely costs and benefits of the proposed regulatory provision.

A UK RIE must provide such additional information in connection with a notice under section 300B(1) of the Act as the FCA may reasonably require.

Where a UK RIE wishes to give notice to the FCA for the purposes of section 300B(1) of the Act, it should in the first instance inform its usual supervisory contact at the FCA.

The FCA expects that an advanced draft of any consultation document a UK RIE intends to publish in connection with a proposed regulatory provision could provide some or all of the information described in REC 3.26.5 R.
Chapter 4

Supervision
4.1 Application and purpose

Application

- REC 4.2 to REC 4.2E, REC 4.3, REC 4.5 and REC 4.6A apply to UK recognised bodies. REC 4.2F to REC 4.2G, REC 4.4 and REC 4.6 to REC 4.8 apply to all recognised bodies. REC 4.8 applies to applicants for recognition as a recognised body.

Purpose

This chapter sets out the FCA’s approach to the supervision of recognised bodies and contains guidance on:

1. the arrangements for investigating complaints about recognised bodies made under section 299 of the Act (Complaints about recognised bodies) (REC 4.4);

2. the FCA’s approach to the exercise of its powers under:
   (a) (for RIEs) section 296 of the Act (Appropriate regulator’s power to give directions) or (for RAPs) regulation 3 of the RAP regulations to give directions to recognised bodies (REC 4.6);
   (b) (for RIEs) section 297 of the Act (Revoking recognition) or (for RAPs) regulation 4 of the RAP regulations to revoke recognition orders (REC 4.7);

   and the procedure to be followed in those cases and where the FCA decides to refuse an application for recognition as a recognised body (REC 4.8);

3. the FCA’s approach to, and procedures for, the exercise of its powers under sections 166 and 167 of the Companies Act 1989 to give directions to UK RIEs in relation to action under their default rules (REC 4.5).

The FCA’s general approach to supervision is intended to ensure that:

1. the FCA has sufficient assurance that recognised bodies continue at all times to satisfy the recognised body requirements; and

2. the FCA’s supervisory resources are allocated, and supervisory effort is applied, in ways which reflect the actual risks to the regulatory objectives.
In applying these principles of risk based supervision to the supervision of *recognised bodies*, the FCA has had particular regard to the special position of *recognised bodies* under the *Act* as well as to its general duties set out in section 2 of the *Act* (The FCA’s general duties).

More information on the supervision of *UK recognised bodies* is given in REC 4.2 and REC 4.3. More information on the supervision of *overseas recognised bodies* is given in REC 6.
4.2 The supervisory relationship with UK recognised bodies

4.2.1 The FCA expects to have an open, cooperative and constructive relationship with UK recognised bodies to enable it to have a broad picture of the UK recognised body’s activities and its ability to meet the recognised body requirements. This broad picture is intended to complement the information which the FCA will obtain under section 293 of the Act (Notification requirements) or under notification rules made under that section (see ■ REC 3). The FCA will usually arrange meetings between the Markets Division and key individuals of the UK recognised body for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the UK recognised body.

4.2.2 UK recognised bodies are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the UK recognised body operates, they are likely to involve changes to the way it satisfies the recognised body requirements.

4.2.3 The FCA expects a UK recognised body to take its own steps to assure itself that it will continue to satisfy the recognised body requirements when considering any changes to its business or operations.

4.2.4 However, the FCA also expects that UK recognised bodies will keep it informed of all significant developments and of progress with their plans and operational initiatives, and will provide it with appropriate assurance that the recognised body requirements will continue to be satisfied.
4.2A Publication of information by UK RIEs and RAPs

4.2A.1 FCA
Under subsections 292A(1) and (2) of the Act, a UK RIE must as soon as practicable after a recognition order is made in respect of it publish such particulars of the ownership of the UK RIE, including the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the UK RIE or (where the UK RIE is also an RAP) the RAP, whether directly or indirectly, as the FCA may reasonably require.

4.2A.2 FCA
Under subsections 292A(3) and (4) of the Act, a UK RIE must as soon as practicable after becoming aware of a transfer of ownership of the UK RIE which gives rise to a change of persons who are in a position to exercise significant influence over the management of the UK RIE or (where the UK RIE is also an RAP) the RAP, whether directly or indirectly, publish such particulars of any such transfer as the FCA may reasonably require.

4.2A.3 FCA
Under subsection 292A(5) of the Act, a UK RIE must publish such particulars of any decision it makes to suspend or remove a financial instrument from trading on a regulated market operated by it as the FCA may reasonably require.
4.2B Exercise of passport rights by a UK RIE

Under section 312C of the Act, if a UK RIE wishes to make arrangements in an EEA State other than the UK to facilitate access to or use of a regulated market, multilateral trading facility or auction platform operated by it, it must give the FCA written notice of its intention to do so. The notice must:

1. describe the arrangements; and
2. identify the EEA State in which the UK RIE intends to make them.

The FCA must, within one month of receiving the UK RIE’s notice, send a copy of it to the Host State regulator.

The UK RIE may not make the arrangements until the FCA has sent a copy of the notice to the Host State regulator.

The requirements that a UK RIE must give the FCA written notice and the UK RIE may not make the arrangements until the FCA has sent a copy of it to the Host State regulator do not apply to arrangements made by a UK RIE on or before 31 October 2007.
Section 301A(1) of chapter 1A of Part XVIII of the Act places an obligation on a person who decides to acquire or increase control (see sections 301D and 301E of the Act) over a UK RIE to notify the FCA, before making the acquisition. Furthermore, those persons are required to obtain the FCA’s approval before acquiring control or increasing the level of control held.

The FCA will approve an acquisition or an increase in control if it is satisfied that the acquisition by the person seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the UK RIE (see section 301F(4) of the Act). The reference to any financial market is to be read as including a reference to any auction platform as a result of the RAP regulations.

If a proposed acquirer has complied with the obligation to notify, the procedure the FCA will follow if it approves or does not approve of that person acquiring or increasing control is set out in sections 301F and 301G of the Act.

The FCA’s internal arrangements provide for any decisions to refuse to approve an acquisition or object to an existing control to be taken at an appropriately senior level.

If the FCA refuses to approve an acquisition or objects to an existing control, the person concerned may refer the matter to the Tribunal (see EG 2.39).

The powers the FCA can exercise in the event that a person acquires or continues to exercise control notwithstanding the FCA’s refusal to approve the acquisition of control or the FCA’s objection to the exercise of control are set out in sections 301J and 301K of the Act.

The offences for which a person who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the Act is liable are set out in section 301L of the Act.
4.2D Suspension and removal of financial instruments from trading

4.2D.1 FCA

(1) Under section 313A of the Act, the FCA may for the purpose of protecting:
   (a) the interests of investors; or
   (b) the orderly functioning of the financial markets;
   require a UK RIE to suspend or remove a financial instrument from trading.

(2) If the FCA exercises this power, the UK RIE concerned may refer the matter to the Tribunal.

4.2D.2 FCA

The procedure the FCA will follow if it exercises its power to require a UK RIE to suspend or remove a financial instrument from trading is set out in sections 313B to 313BE of the Act. The FCA’s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the FCA exercises this power, the UK RIE concerned and the issuer (if any) of the relevant financial instrument may refer the matter to the Tribunal (see EG 2.39).

4.2D.3 FCA

Under section 313C(1) of the Act, if the FCA exercises its power to require a UK RIE to suspend or remove a financial instrument from trading, it must as soon as reasonably practicable:

   (1) publish its decision in such manner as it considers appropriate, unless the decision has already been published under section 313B(2)(b) of the Act; and

   (2) inform ESMA and the competent authorities of all other EEA States of its decision.

4.2D.4 FCA

Under section 313C(2) of the Act, if the FCA receives notice from a UK RIE that the UK RIE has suspended or removed a financial instrument from trading on a regulated market operated by it, the FCA must inform the competent authorities of all other EEA States of the action taken by the UK RIE.

4.2D.5 FCA

Under sections 313C(3) and (4) of the Act, if the FCA receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of MiFID has required the suspension of a financial instrument from trading, the FCA must require each UK RIE to suspend the instrument from trading on any regulated market or multilateral trading facility operated by the UK RIE.
Under sections 313C(3) and (5) of the Act, if the FCA receives notice from the competent authority of another EEA State that that authority, pursuant to Article 41.2 of MiFID, has required the removal of a financial instrument from trading, the FCA must require each UK RIE to remove the instrument from trading on any regulated market or multilateral trading facility operated by the UK RIE.
4.2E Information: compliance of UK recognised bodies with EU requirements

Under section 293A of the Act, the FCA may require a UK recognised body to give such information as it reasonably requires in order to satisfy itself that the UK recognised body is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of section 293A of the Act by the Treasury.
4.2F.1 Information gathering power on FCA's own initiative

(1) While the FCA will seek to obtain information from an RIE in the context of an open, cooperative and constructive relationship with the RIE, where it appears to the FCA that obtaining information in that context will not achieve the necessary results, the FCA or (as the case may be) its officers may, under section 165(7) of the Act, by notice in writing, require any of the following persons to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require:

(a) the RIE; or
(b) a person who is connected with the RIE.

(2) Under section 165(11) of the Act, a person is connected with a recognised body if he is or has at any relevant time been:

(a) a member of the RIE's group; or
(b) a controller of the RIE; or
(c) any other member of a partnership of which the RIE is a member; or
(d) a person mentioned in Part I of Schedule 15 of the Act (reading references in that Part to the 'authorised person' as references to the RIE).
Where the FCA exercises its power conferred by section 166(1) of the Act (Reports by skilled persons), SUP 5.5.1 R, SUP 5.5.5 R and SUP 5.5.9 R (to the extent they relate to the FCA’s powers under section 166 of the Act) apply to a RIE in the same way as they apply to a firm.

The guidance in SUP 5 which relates to the FCA’s power in section 166 of the Act also applies to a RIE in the same way as it applies to a firm.
4.3 Risk assessments for UK recognised bodies

4.3.1 Information is needed to support the FCA’s risk based approach to the supervision of all regulated entities. Risk based supervision is intended to ensure that the allocation of supervisory resources and the supervisory process are compatible with the regulatory objectives and the FCA’s general duties under the Act. The central element of the process of risk based supervision is a systematic assessment by the FCA (a risk assessment) of the main supervisory risks and concerns for each regulated entity.

4.3.2 For each UK recognised body, the FCA will conduct a periodic risk assessment. This assessment will take into account relevant considerations including the special position of recognised bodies under the Act, the nature of the UK recognised body’s members, the position of other users of its facilities and the business environment more generally.

4.3.3 The risk assessment will guide the FCA’s supervisory focus. It is important, therefore, that there is good dialogue between the FCA and the recognised body. The FCA expects to review its risk assessment with the staff of the UK recognised body to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with key individuals of the UK recognised body. If appropriate, the FCA may send a detailed letter to the body’s chief executive, chairman or both with proposals for further action or work to address particular concerns or issues and seek their comments on the risk assessment.
4.4 Complaints

Recognised body's arrangements

A UK recognised body will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant recognition requirements (see ▶ REC 2.15 and ▶ REC 2.16) or RAP recognition requirements (see ▶ REC 2A.3.2 G).

The FCA's arrangements

The Act does not provide a mechanism for appeals to the FCA from decisions by recognised bodies in relation to complaints. However, the FCA is required by section 299 of the Act (Complaints about recognised bodies) to have arrangements to investigate complaints (called relevant complaints in the Act) which it considers relevant to the question of whether a recognised body should remain recognised as such. This section describes aspects of the FCA’s arrangements for investigating relevant complaints.

Where the FCA receives a complaint about a recognised body, it will, in the first instance, seek to establish whether the complainant has approached the recognised body. Where this is not the case, the FCA will ask the complainant to complain to the recognised body. Where the complainant is dissatisfied with the handling of the complaint, but has not exhausted the recognised body’s own internal complaints procedures (in the case of a complaint against a UK recognised body, including by applying to that body’s complaints investigator), the FCA will encourage the complainant to do so.

The FCA will not usually consider a complaint which has not, in the first instance, been made to the recognised body concerned, unless there is good reason for believing that it is a relevant complaint which merits early consideration by the FCA.

When it is considering a relevant complaint, the FCA will make its own enquiries as appropriate with the recognised body, the complainant and other persons. It will usually ask the recognised body and the complainant to comment upon any preliminary or draft conclusions of its review and to confirm any matters of fact at that stage.

The FCA will communicate the outcome of its review of a relevant complaint to the complainant and the recognised body, but will normally only discuss any action which it considers the recognised body should take with the recognised body itself.
4.5 FCA supervision of action by UK RIEs under their default rules

4.5.1 UK RIEs which, under their rules, have market contracts are required to have default rules enabling them (among other things) to take action in relation to a member who appears to be unable to meet his obligations in respect of one or more unsettled market contracts. The detailed recognition requirements relating to the default rules are set out in ■ REC 2.17.

4.5.2 The default rules are designed to ensure that rights and liabilities between the defaulter and any counterparty to an unsettled market contract are discharged, and for there to be paid between the defaulter and each counterparty one net sum. The Companies Act 1989 contains provisions which protect action taken under default rules from the normal operation of insolvency law which might otherwise leave this action open to challenge by a relevant office-holder.

4.5.3 The Companies Act 1989 also gives the FCA powers to supervise the taking of action under default rules. Under section 166 of the Companies Act 1989 (Powers of the appropriate regulator to give directions) (see ■ REC 4.5.4 G), the FCA may direct a UK RIE to take, or not to take, action under its default rules. Before exercising these powers the FCA must consult the UK RIE. The FCA may also exercise these powers if a relevant office-holder applies to it under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken) (see ■ REC 4.5.9 G).

4.5.4 Table The Companies Act 1989: section 166

The FCA may issue a "positive" direction (to take action) under section 166(2)(a) of the Companies Act 1989:

Where in any case a [UK RIE] has not taken action under its default rules- if it appears to [the FCA] that it could take action, [the FCA may direct it to do so, but under section 166(3)(a) of the Companies Act 1989:

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and [the FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that failure to take action would involve undue risk to investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

The FCA may issue a "negative" direction (not to take action) under section 166(2)(b) of the Companies Act 1989:
Where in any case a [UK RIE] has not taken action under its default rules - if it appears to the [FCA] that it is proposing to take or may take action, [the FCA] may direct it not to do so.

but under section 166(3)(b) of the Companies Act 1989:

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and the [FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

4.5.5  
Other than in exceptional circumstances, the FCA will consult with the Bank of England before exercising these powers.

4.5.6  
Under section 166(6) of the Companies Act 1989, a negative direction cannot be given if, in relation to the defaulter, either:

(1) a bankruptcy order or an award of sequestration of the defaulter’s estate has been made, or an interim receiver or interim trustee has been appointed; or

(2) a winding-up order has been made, a resolution for voluntary winding-up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;

and any previous negative direction will cease to have effect on the making or passing of any such order, award or appointment.

4.5.7  
Under section 166(5) of the Companies Act 1989, a negative direction may be expressed to have effect until a further direction is given, which may either be a positive direction or a revocation of the earlier negative direction.

4.5.8  
Under section 166(7) of the Companies Act 1989, where a UK RIE has taken action either of its own accord or in response to a direction, the FCA may direct it to do or not to do specific things subject to these being within the powers of the UK RIE under its default rules. However,

(1) where the UK RIE is acting in accordance with a direction given by the FCA to take action under section 166(2)(a) of the Act on the basis that failure to take action would involve undue risk to investors or other participants in the market, the FCA will not direct it to do or not to do specific things which the UK RIE has power to do under its default rules, unless the FCA is satisfied that this will not impede or frustrate the proper and efficient conduct of the default proceedings; and

(2) where the UK RIE has taken action under its default rules without being directed to do so, the FCA will not direct it to do or not to do specific things which the UK RIE has power to do under its default rules, unless the FCA is satisfied that:
Section 167 of the Companies Act 1989

Where, in relation to a member (or designated non-member) of a UK RIE:

1. a bankruptcy order; or
2. an award of sequestration of his estate; or
3. an order appointing an interim receiver of his property; or
4. an administration or winding-up order; or
5. a resolution for a voluntary winding-up; or
6. an order appointing a provisional liquidator;

has been made or passed and the UK RIE has not taken action under its default rules as a result of this event or of the matters giving rise to it, a relevant office-holder appointed in connection with the order, award or resolution may make an application to the FCA under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken).

The effect of an application under section 167 of the Companies Act 1989 is to require the UK recognised body concerned to take action under its default rules or to require the FCA to take action under section 166 of the Companies Act 1989 (see REC 4.5.4G).

The procedure is that the FCA must notify the UK recognised body of the application and, unless within three business days after receipt of that notice, the UK recognised body:

1. takes action under its default rules; or
2. notifies the FCA that it proposes to take action forthwith; or
3. is directed to take action by the FCA under section 166(2)(a) of the Companies Act 1989;

the provisions of sections 158 to 165 of the Companies Act 1989 do not apply in relation to market contracts to which the member or designated non-member is a party or to anything done by the UK recognised body for the purpose of, or in connection with, the settlement of any market contracts.
4.6 The section 296 power to give directions

4.6.1 Under section 296 of the Act (FCA’s power to give directions) and (for RAPs) under regulation 3 of the RAP regulations, the FCA has the power to give directions to a recognised body to take specified steps in order to secure its compliance with the recognised body requirements. In the case of a UK RIE (including one which operates an RAP) those steps may include granting the FCA access to the UK RIE’s premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any regulated activity by the UK RIE for the period specified in the direction.

4.6.2 [deleted]

4.6.3 The FCA is likely to exercise its power under section 296 of the Act or regulation 3 of the RAP regulations if it considers that:

(1) there has been, or was likely to be, a failure to satisfy one or more of the recognised body requirements which has serious consequences;

(2) compliance with the direction would ensure that one or more of the recognised body requirements is satisfied; and

(3) the recognised body is capable of complying with the direction.

4.6.4 Under section 298(7) of the Act (Directions and revocation: procedure), and (for RAPs) regulation 5(7) of the RAP regulations, the FCA need not follow the consultation procedure set out in the rest of section 298 (see REC 4.8) or may cut short that procedure, if it considers it reasonably necessary to do so. For RAPs, the FCA need not follow the procedure set out in regulation 5 of the RAP regulations or may cut short the procedure, if it considers it essential to do so.
4.6A The section 192C power to direct qualifying parent undertakings

(1) Under section 192C of the Act (Power to direct qualifying parent undertaking), the FCA has the power to give a direction to the qualifying parent undertaking of a UK RIE if the general condition is satisfied.

(2) For the purposes of section 192C of the Act, a parent undertaking of a UK RIE is a 'qualifying parent undertaking' if:
   (a) the parent undertaking is a body corporate which is incorporated in the United Kingdom, or has a place of business in the United Kingdom;
   (b) the parent undertaking is not itself an authorised person, a RIE or a RCH; and
   (c) the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.

(3) For the purposes of section 192C of the Act, the general condition is that the FCA considers that it is desirable to give the direction in order to advance one of more of its operational objectives.

(4) In exercising or deciding whether to exercise its power under section 192(c) of the Act, the FCA will have regard to any statement of policy published under this section and for the time being in force.

[Note:1. Treasury has issued a draft order for consultation prescribing the types of financial institutions which are qualifying parent undertakings. See the draft Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 201*, as published in the Treasury consultation paper titled 'A new approach to financial regulation: draft secondary legislation': [web address tbc].

2. The FCA has issued a draft statement of policy for consultation with respect to the giving of directions under section 192C. See Chapter 5 and Appendix 7 of CP 12/34: [web address tbc]]
Under section 297 of the Act (Revoking recognition) and (for RAPs) under regulation 4 of the RAP regulations, the FCA has the power to revoke a recognition order relating to a recognised body.

The FCA will revoke a recognition order if:

1. [deleted]

2. the recognised body has asked the FCA to revoke the order.

Where the FCA makes a revocation order under section 297 of the Act in relation to a UK RIE which is also an RAP, the FCA will also revoke the recognition order relating to its status as an RAP.

The FCA will usually consider revoking a recognition order if:

1. the recognised body is failing or has failed to satisfy one or more of the recognised body requirements and that failure has or will have serious consequences; or

2. it would not be possible for the recognised body to comply with a direction under section 296 of the Act (FCA’s power to give directions) or (for RAPs) regulation 3 of the RAP regulations; or

3. for some other reason, it would not be appropriate for the FCA to give a direction under section 296 or (for RAPs) regulation 3 of the RAP regulations; or

4. in the case of a UK RIE, it has not carried on the business of an investment exchange during the 12 months beginning with the day on which the recognition order took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six months ending with the day the recognition order is revoked; or

5. in the case of an RAP in relation to its RAP recognition order, it has not carried on the business of an auction platform during the 12 months beginning with the day on which the RAP recognition order took effect in relation to it, or it has not carried on the business of an auction platform at
any time during the period of six months ending with the day the RAP recognition order is revoked.

The FCA would be likely to consider the conditions in REC 4.7.3 G (2) or REC 4.7.3 G (3) to be triggered in the following circumstances:

1. the recognised body appears not to have the resources or management to be able to organise its affairs so as to satisfy one or more of the recognised body requirements; or

2. the recognised body does not appear to be willing to satisfy one or more of the recognised body requirements; or

3. the recognised body is failing or has failed to comply with a direction made under section 296 of the Act or (for RAPs) regulation 3 of the RAP regulations; or

4. the recognised body has ceased to carry out regulated activities in the United Kingdom, or has so changed the nature of its business that it no longer satisfies one or more of the recognised body requirements in respect of the regulated activities for which recognised body status is relevant.

In addition to the relevant factors set out in REC 4.7.4 G, the FCA will usually consider that it would not be able to secure an ROIE’s compliance with the recognition requirements or other obligations in or under the Act by means of a direction under section 296 of the Act, if it appears to the FCA that the ROIE is prevented by any change in the legal framework or supervisory arrangements to which it is subject in its home territory from complying with the recognition requirements or other obligations in or under the Act.
The section 298 procedure

A decision to:

1. revoke a recognition order under section 297 of the Act (Revoking recognition) or (for RAPs) regulation 4 of the RAP regulations; or
2. make a direction under section 296 (FCA’s powers to give directions) or (for RAPs) regulation 3 of the RAP regulations; or
3. refuse to make a recognition order under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) or (for RAPs) regulation 2 of the RAP regulations;

is a serious one and section 298 of the Act (Directions and revocation: procedure) and (for RAPs) regulation 5 of the RAP regulations set out procedures (see REC 4.8.9 G) which the FCA will follow unless, in the case of a revocation of a recognition order, the recognised body concerned has given its consent (see section 297(1) or regulation 4(1) of the RAP regulations) or:

(a) in case where the FCA proposes to make a direction under section 296 it considers it is reasonably necessary not to follow, or to cut short, the procedure (see REC 4.8.7 G); or
(b) (for RAPs) in a case where the FCA proposes to make a direction under regulation 3 of the Rap regulations, it considers it is essential not to follow, or to cut, short, the procedure.

The FCA’s internal arrangements provide for any of these decisions to be taken at an appropriately senior level.

In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the Act or (for RAPs) regulation 3 or 4 of the RAP regulations, the FCA will have regard to all relevant information and factors including:

1. its guidance to recognised bodies;
2. the results of its routine supervision of the body concerned;
3. the extent to which the failure or likely failure to satisfy one or more of the recognised body requirements may affect the statutory objectives.
In considering whether or not to make a recognition order, the FCA will have regard to all relevant information and factors, including its guidance to recognised bodies and applicants and the information provided by applicants. Details of the application processes and other guidance for applicants are set out in ■ REC 5 and (for overseas applications) ■ REC 6.

The procedures laid down in section 298 of the Act and (for RAPs) regulation 5 of the RAP regulations are summarised, with the FCA’s guidance about the actions it proposes to take in following these procedures, in the tables at ■ REC 4.8.9 G and ■ REC 4.8.10 G respectively.

Before exercising its powers under section 296 or section 297 of the Act or (for RAPs) regulation 3 or 4 of the RAP regulations, the FCA will usually discuss its intention, and the basis for this, with the key individuals or other appropriate representatives of the recognised body. It will usually discuss its intention not to make a recognition order with appropriate representatives of the applicant.

Table Key steps in the section 298 procedure

<table>
<thead>
<tr>
<th>The FCA will:</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) give written notice to the RIE (or applicant);</td>
<td>The notice will state why the FCA intends to take the action it proposes to take, and include an invitation to make representations, and the period within which representations should be made (unless subsequently extended by the FCA).</td>
</tr>
<tr>
<td>(2) receive representations from the RIE or applicant concerned;</td>
<td>The FCA will not usually consider oral representations without first receiving written representations from the RIE (or applicant). It will normally only hear oral representations from the RIE on request.</td>
</tr>
<tr>
<td>(3) write promptly to RIE (or applicant) who requests the opportunity to make oral representations if it decides not to hear that person’s representations;</td>
<td>The FCA will indicate why it will not hear oral representations and the FCA will allow the RIE (or applicant) further time to respond.</td>
</tr>
<tr>
<td>(4) have regard to representations made;</td>
<td></td>
</tr>
<tr>
<td>(5) (when it has reached its decision) notify the RIE (or applicant) concerned in writing.</td>
<td></td>
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</tbody>
</table>
For RAPs, key steps in the regulation 5 procedure

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
<th>Guidance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>give written notice to the RAP (or applicant);</td>
<td>The FCA will state why the FCA intends to take the action it proposes to take, and include an invitation to make representations, and the date by which representations should be made.</td>
</tr>
<tr>
<td>2</td>
<td>take such steps as it considers reasonably practicable to bring the notice to the attention of the members of the RAP or of the applicant, as the case may be;</td>
<td>The FCA will also notify persons individually (as far as it considers it reasonably practicable to do so) if it considers that the action it proposes to take would affect them adversely in a way which would be different from its effect on other persons of the same class.</td>
</tr>
<tr>
<td>3</td>
<td>publish the notice so as to bring it to the attention of other persons likely to be affected;</td>
<td>The FCA will not usually consider oral representations without first receiving written representations from the person concerned. It will normally only hear oral representations from the RAP (or applicant) itself or of a person whom it has notified individually, on request.</td>
</tr>
<tr>
<td>4</td>
<td>receive representations from the RAP or applicant concerned, any member of the RAP or applicant, and any other person who is likely to be affected by the action the FCA proposes to take;</td>
<td>The FCA will indicate why it will not hear oral representations and the FCA will allow the person concerned further time to respond.</td>
</tr>
<tr>
<td>5</td>
<td>write promptly to any person who requests the opportunity to make oral representations if it decides not to hear that person's representations;</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>have regard to representations made;</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>(when it has reached its decision) notify the RAP (or applicant) concerned in writing;</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>(if it has decided to give a direction, or revoke or refuse to make a recognition order) take such steps as it considers reasonably practicable to bring its decision to the attention of members of the RAP or applicant and to other persons likely to be affected.</td>
<td>The FCA will usually give notice of its decision to the same persons and in the same manner as it gave notice of its intention to act.</td>
</tr>
</tbody>
</table>
4.9 Disciplinary measures

4.9.1 FCA

(1) Under sections 312E and 312F of the Act, if the FCA considers that a recognised body has contravened a requirement imposed by the FCA under any provision of the Act that relates to a RIE, or under any provision of the Act whose contravention constitutes an offence the FCA has power to prosecute, or by a qualifying EU provision specified by the Treasury, it may:

(a) publish a statement to that effect; or

(b) impose on the body a financial penalty of such amount as it considers appropriate.

(2) The procedures and policies which the FCA will follow if it proposes to publish a statement under section 312E or to impose a penalty under section 312F, and if it decides to publish such statement or impose such penalty, are set out in DEPP.

(3) In exercising or deciding whether to exercise its power to impose a penalty under section 312F of the Act, the FCA will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

[Note: The FCA has issued a statement of policy for consultation with respect to the exercise of its powers under section 312F of the Act.]

4.9.2 FCA

(1) Under section 192K of the Act, if the FCA considers that a qualifying parent undertaking of a UK RIE has contravened a requirement of a direction given by the FCA under section 192C of the Act, or a provision of rules made by the FCA under section 192J of the Act, it may:

(a) impose a penalty of such amount as it considers appropriate on the qualifying parent undertaking of the UK RIE, or any person who was knowingly concerned in the contravention; or

(b) publish a statement censuring the person.

(2) The procedures which the FCA will follow if it proposes to take action, and if it decides to take action against a person, under section 192K are set out in DEPP.

(3) In exercising or deciding whether to exercise its power under section 192K of the Act, the FCA will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.
[Note: The FCA has issued a statement of policy for consultation with respect to the exercise of its powers under section 192K of the Act.]
Chapter 5

Applications for Recognition (UK recognised bodies)
5.1 Introduction and legal background

5.1.1 A body corporate or an unincorporated association may apply to the FCA for recognition as a UK recognised body under sections 287 (Application by an investment exchange) or 288 (Application by a clearing house) of the Act.

5.1.1A A UK RIE may apply to the FCA for recognition as an RAP under regulation 2 of the RAP regulations.

5.1.2 This chapter sets out guidance for UK applicants and for UK entities which are considering making an application. Guidance for applicants and prospective applicants for ROIE status is given in REC 6.

5.1.3 [Deleted]
5.1.4 [Deleted]
5.1.5 [Deleted]
5.1.6 [Deleted]
5.1.7 [Deleted]
5.2 Application process

5.2.1 An applicant for recognised body status needs to demonstrate to the FCA that it is able to meet the recognised body requirements before a recognition order can be made. Once it has been recognised, a recognised body has to comply with the recognised body requirements at all times. (Guidance on the recognised body requirements applicable to UK recognised bodies (and applicants) is given in ■ REC 2 and ■ REC 2A).

5.2.1A In addition, under section 290A of the Act (Refusal of recognition on ground of excessive regulatory provision), the FCA must refuse to make a recognition order in relation to a body applying for recognition as a UK RIE if it appears to the FCA that an existing or proposed regulatory provision of the applicant in connection with the applicant’s business as an investment exchange or the provision by the applicant of clearing facilitation services imposes, or will impose, an excessive requirement (as defined in section 300A of the Act) on persons directly or indirectly affected by it.

5.2.2 (1) There is no standard application form. A prospective applicant should contact the Markets Division at the FCA at an early stage for advice on the preparation, scheduling and practical aspects of its application.

(2) It is very important, if an application is to be processed smoothly and in a reasonable time, that it is comprehensively prepared and based on a well-developed and clear proposal.

5.2.3 An application should:

(1) be made in accordance with any directions the FCA may make under section 287 (Application by an investment exchange) of the Act or (for RAPs) regulation 2 of the RAP regulations;

(2) in the case of an application under section 287 of the Act, be accompanied by the applicant’s regulatory provisions and in the case of an application under section 287 of the Act information required pursuant to sub-sections 287(3)(c), (d) and (e) of the Act (see ■ REC 5.2.3A G) (the material specifically prescribed in section 287 or section 288);

(3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the FCA that the recognised body requirements will be met; and

(4) be accompanied by the appropriate fee (see ■ REC 7).
5.2.3 \( \text{FCA} \)  

The information required pursuant to sub-sections 287(c), (d) and (e) of the Act is:

1. a programme of operations which includes the types of business the applicant proposes to undertake and the applicant’s proposed organisational structure;

2. particulars of the persons who effectively direct the business and operations of the exchange; and

3. particulars of the ownership of the exchange, and in particular the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

5.2.4 \( \text{FCA} \)  

Other information and documentation which should normally accompany an application is listed in more detail in REC 5.2.14 G.

5.2.5 \( \text{FCA} \)  

A prospective applicant who is an authorised person may wish to consult the FCA about the extent to which information which it has already supplied in connection with its status as an authorised person can be used to support an application to become a UK recognised body.

5.2.5A \( \text{FCA} \)  

A UK RIE applying for recognition as an RAP may wish to consult the FCA about the extent to which information which it has already supplied in connection with its status as a UK RIE can be used to support an application to be recognised as an RAP.

5.2.6 \( \text{FCA} \)  

Under section 289 of the Act (Applications: supplementary) or (for an RAP applicant) regulation 2 of the RAP regulations, the FCA may require the applicant to provide additional information, and may require the applicant to verify any information in any manner. In view of their likely importance for any application, the FCA will normally wish to arrange for its own inspection of an applicant’s information technology systems.

5.2.6A \( \text{FCA} \)  

In the case of an application to become a UK RIE or an RAP, under subsection 290(1B) of the Act and (for an RAP applicant) regulation 2(8) of the RAP regulations, the application must be determined by the FCA before the end of the period of six months beginning with the date on which it receives the completed application.

5.2.7 \( \text{FCA} \)  

At any time after making a formal application, the applicant may make amendments to its rules, guidance or any other part of its application submitted to the FCA.

5.2.8 \( \text{FCA} \)  

1. The FCA will keep the applicant informed of the progress of the application.

2. It may be necessary to ask the applicant to clarify or amplify some aspects of its proposals. The FCA may wish to discuss various aspects of the application and may invite the applicant to attend one or more meetings for that purpose. When requested to do so, the FCA will explain the nature of the information which it has asked an applicant to supply in connection with its application.
5.2.9 G (1) [deleted]  
(2) [deleted]  
5.2.10 G [deleted]  
5.2.11 G [deleted]  
5.2.12 FCA Where the FCA considers that it is unlikely to make a recognition order it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see ■ REC 5.2.7 G). If the FCA decides that it will not make a recognition order, it will follow the procedure set out in section 298 of the Act (Directions and revocation: procedure) or (in the case of an RAP) regulation 5 of the RAP regulations and described in more detail in ■ REC 4.8.  
5.2.13 G [deleted]  
5.2.14 FCA Table Information and supporting documentation (see ■ REC 5.2.4 G).  
(1) Details of the applicant’s constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous documents) and any agreements between the applicant, its owners or other persons relating to its constitution or governance (if not contained in the information listed in REC 5.2.3A G). An applicant for RAP status must provide details of the relationship between the governance arrangements in place for the UK RIE and the RAP.  
(2) Details of all business to be conducted by the applicant, whether or not a regulated activity (if not contained in the information listed in REC 5.2.3A G).  
(3) Details of the facilities which the applicant plans to operate, including details of the trading platform or (for an RAP) auction platform, settlement arrangements, clearing facilitation services and custody services which it plans to supply. An applicant for RAP status must provide details on the relationship between the auction platform and any secondary market in emissions auction products which it operates or plans to operate.  
(4) Copies of the last three annual reports and accounts and, for the current financial year, quarterly management accounts.  
(5) Details of its business plan for the first three years of operation as a UK recognised body (if not contained in the information listed in REC 5.2.3A G).  
(6) A full organisation chart and a list of the posts to be held by key individuals (with details of the duties and responsibilities) and the names of the persons proposed for these appointments when these names are available (if not contained in the information listed in REC 5.2.3A G).  
(7) Details of its auditors, bankers, solicitors and any persons providing corporate finance advice or similar services (such as reporting accountants) to the applicant.  
(8) Details of any relevant functions to be outsourced or delegated, with copies of relevant agreements.  
(9) Details of information technology systems and of arrangements for their supply, management, maintenance and upgrading, and security.
<table>
<thead>
<tr>
<th></th>
<th>Details</th>
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<tbody>
<tr>
<td>(10)</td>
<td>Details of all plans to minimise disruption to operation of its facilities in the event of the failure of its information technology systems.</td>
</tr>
<tr>
<td>(11)</td>
<td>Details of internal systems for financial control, arrangements for risk management and insurance arrangements to cover operational and other risks.</td>
</tr>
<tr>
<td>(12)</td>
<td>Details of its arrangements for managing any counterparty risks.</td>
</tr>
<tr>
<td>(13)</td>
<td>Details of internal arrangements to safeguard confidential or privileged information and for handling conflicts of interest.</td>
</tr>
<tr>
<td>(14)</td>
<td>Details of arrangements for complying with the notification rules and other requirements to supply information to the FCA.</td>
</tr>
<tr>
<td>(15)</td>
<td>Details of the arrangements to be made for monitoring and enforcing compliance with its rules and with its clearing, settlement and default arrangements.</td>
</tr>
<tr>
<td>(16)</td>
<td>A summary of the legal due diligence carried out in relation to ascertaining the enforceability of its rules (including default rules) and the results and conclusions reached.</td>
</tr>
<tr>
<td>(17)</td>
<td>Details of the procedures to be followed for declaring a member in default, and for taking action after that event to close out positions, protect the interests of other members and enforce its default rules.</td>
</tr>
<tr>
<td>(18)</td>
<td>Details of membership selection criteria, rules and procedures, including (for an RAP) details of how the rules of the UK RIE will change in order to reflect RAP status.</td>
</tr>
<tr>
<td>(19)</td>
<td>Details of arrangements for recording transactions effected by, or cleared through, its facilities.</td>
</tr>
<tr>
<td>(20)</td>
<td>Details of arrangements for detecting financial crime and market abuse, including arrangements for complying with money laundering law.</td>
</tr>
<tr>
<td>(21)</td>
<td>Details of criteria, rules and arrangements for selecting specified investments to be admitted to trading on (or cleared by) an RIE and, where relevant, details of how information regarding specified investments will be disseminated to users of its facilities.</td>
</tr>
<tr>
<td>(22)</td>
<td>Details of arrangements for cooperating with the FCA and other appropriate authorities, including draft memoranda of understanding or letters.</td>
</tr>
<tr>
<td>(23)</td>
<td>Details of the procedures and arrangements for making and amending rules, including arrangements for consulting on rule changes.</td>
</tr>
<tr>
<td>(24)</td>
<td>Details of disciplinary and appeal procedures, and of the arrangements for investigating complaints.</td>
</tr>
</tbody>
</table>
Chapter 6

Overseas Investment Exchanges
6.1 Introduction and legal background

The Act prohibits any person from carrying on, or purporting to carry on, regulated activities in the United Kingdom unless that person is an authorised person or an exempt person. If an overseas investment exchange wishes to undertake regulated activities in the United Kingdom, it will need to:

1. obtain a Part 4A permission from the FCA;

2. (in the case of an EEA firm or a Treaty firm) qualify for authorisation under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty rights) to the Act, respectively; or

3. (in the case of an EEA market operator) obtain exempt person status by exercising its passport rights under Articles 31(5) and 31(6) of MiFID (in the case of arrangements relating to a multilateral trading facility) or Article 42(6) of MiFID (in the case of arrangements relating to a regulated market); or

4. obtain exempt person status by being declared by the FCA to be an ROIE.

Having the status of an ROIE facilitates the participation of overseas investment exchanges in UK markets. In comparison, Overseas Investment Exchanges and Overseas Clearing Houses are recognised by the FCA to be ROIEs because the UK authorities need to have in the day-to-day affairs of an overseas recognised body because they are able to rely substantially on the supervisory and regulatory arrangements in the country where the applicant’s head office is situated.
6.2 Applications

6.2.1 Overseas investment exchanges which are considering whether to seek authorisation or recognition should first consider whether they will be carrying on regulated activities in the United Kingdom. Overseas investment exchanges which do not carry on regulated activities in the United Kingdom need take no action.

(2) Prospective applicants should discuss authorisation and recognition with the FCA before deciding whether to seek authorisation or recognition.

6.2.2 A prospective applicant may wish to contact the Markets Division at the FCA at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an overseas recognised body.

6.2.3 Applicants for authorised person status should refer to the FCA website "How do I get authorised": http://www.fca.org.uk/firms/about-authorisation. Applications for recognition as an overseas recognised body should be addressed to:

The Financial Conduct Authority (Markets Division)
25 The North Colonnade
Canary Wharf
London E14 5HS

6.2.4 There is no standard application form for application for recognition as an ROIE. An application should be made in accordance with any direction the FCA may make under section 287 (Application by an investment exchange) of the Act and should include:

(1) the information, evidence and explanatory material necessary to demonstrate to the FCA that the recognition requirements (set out in REC 6.3) will be met;

(2) the application fee (see REC 7);

(3) the address of the applicant’s head office in its home territory;

(4) the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under the Act (see section 292(1));
(5) the applicant’s regulatory provisions;

(6) one copy of each of the following documents:

(a) its most recent annual report and accounts; and

(b) the applicant’s memorandum and articles of association or any similar or analogous documents; and

(7) information identifying the following (if not contained in the documents listed in (5) or (6) or the material referred to in (1)):

(a) any type of regulated activity which the applicant envisages carrying on in the United Kingdom;

(b) any type of specified investment dealt in on, or arranged to be cleared through the applicant;

(c) the date by which the applicant wishes the recognition order to take effect; and

(d) any body or authority which supervises the applicant under the law of the home territory, the status of the applicant under that law, and the enactment or regulation under which the supervision is conducted.

The FCA may require further information from the applicant and may need to have discussions with the appropriate authorities in the applicant’s home territory. To allow sufficient time for applications to be processed and for the necessary contacts to be made with the appropriate home territory authorities, applications should be made not later than six months before the applicant wishes the recognition order to take effect. No guarantee can be given that a decision will be reached within this time, although the FCA will endeavour to meet the applicant’s reasonable timing requirements.

All material should be supplied in English, or accompanied, if appropriate, by an accurate English translation. An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.
Before making a recognition order, the FCA will need to be satisfied that the recognition requirements in section 292(3) of the Act (Overseas investment exchanges) have been met. These requirements are the only recognition requirements applicable to ROIEs.

Sections 292(3) and 292(4) state:

Section 292(3)

The requirements are that-

(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with recognition requirements other than such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph;

(b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the ROIE;

(c) the applicant is able and willing to co-operate with the FCA by the sharing of information and in other ways; and

(d) adequate arrangements exist for co-operation between the FCA and those responsible for the supervision of the applicant in the country or territory in which the applicant’s head office is situated.

Section 292(4)

In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the FCA is to have regard to-

(a) the relevant law and practice of the country or territory in which the applicant’s head office is situated;

(b) the rules and practices of the applicant.

The reference to recognition requirements in section 292(3)(a) of the Act is a reference to the requirements applicable to UK RIEs in the Recognition Requirements Regulations. These requirements are set out, together with guidance, in REC 2.
6.4 [Deleted]
6.5 FCA decision on recognition

6.5.1 If the FCA considers that the requirements of the Act are satisfied, it may make a recognition order, which will state the date on which it takes effect.

6.5.2 Where the FCA considers that it is unlikely to make a recognition order, it will discuss its concerns with the applicant with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application. If the FCA decides to refuse to make a recognition order, it will follow the procedure set out in section 298 of the Act (Directions and revocation: procedure) (which applies in consequence of section 290(5) of the Act (Recognition orders)) which is described in more detail in REC 4.8.
An ROIE is required to notify the FCA of certain events and give information to it on a regular basis and when certain specified events occur. Section 295 of the Act (Notification: overseas investment exchanges and overseas clearing houses) requires each ROIE to provide the FCA with a report (at least once a year) which contains:

1. a statement as to whether any events have occurred which are likely to affect the FCA’s assessment of whether it is satisfied that the ROIE continues to satisfy the recognition requirements set out in the section 292(3) of the Act (Overseas investment exchanges and overseas clearing houses) (see REC 6.3);

2. the information specified in the FCA’s notification rules for ROIEs (see REC 6.7).

The following events are examples of events likely to affect an assessment of whether an ROIE is continuing to satisfy the recognition requirements:

1. significant changes to any relevant law or regulation in its home territory, including laws or regulations:
   a. governing exchanges or, if relevant to an ROIE’s satisfaction of the recognition requirements, clearing houses;
   b. designed to prevent insider dealing, market manipulation or other forms of market abuse or misconduct;
   c. designed to protect the interests of clients of members of the ROIE, or of a class of bodies which includes the ROIE;
   d. which affect:
      i. the ability of the ROIE to seek information (whether compulsorily or voluntarily) from its members, including information relating to the price and volume of transactions, the identity of parties to transactions, and the movement of funds associated with transactions;
      ii. the ability of the ROIE to pass such information, on request, to UK authorities;

2. significant changes to its internal organisation or structure;

3. significant changes to the practices of the ROIE applying to any regulated activities carried on by it in the United Kingdom;
(4) any other event or series of events in relation to the body which:
   (a) affects or may significantly affect cooperation between the ROIE, or its supervisor in its home territory, and the FCA; or
   (b) has or may have a substantial effect on the structure of the markets in which the body operates; or
   (c) brings about or may bring about a substantial change in the nature and composition of its membership in the United Kingdom; or
   (d) brings about or may bring about a substantial change in the regulated activities undertaken by it in the United Kingdom.

6.6.3 FCA
The period covered by a report submitted under section 295(1) of the Act starts on the day after the period covered by its last report or, if there is no such report, after the making of the recognition order recognising the ROIE as such, and ends on the date specified in the report or, if no date is specified, on the date of the report.

6.6.4 FCA
If an ROIE changes the period covered by its report, it should ensure that the first day of the period covered by a report is the day immediately following the last day of the period covered by the previous report.

6.6.5 FCA
The period covered by a report submitted under section 295(1) of the Act would most conveniently be one year.

6.6.6 FCA
Copies of the report should be sent to the FCA within two months after the end of the period to which it relates.
6.7 Notification rules for overseas recognised bodies

Application

The notification rules in this chapter, which are made under sections 293 (Notification requirements) and 295 of the Act (Notification: overseas investment exchanges and overseas clearing houses), apply to all ROIEs.

Purpose

The notification rules in this chapter are made by the FCA in order to ensure that it is provided with notice of events and information which it reasonably requires for the exercise of its functions under the Act.

Reports under section 295

Where an ROIE includes in its report made under section 295(1) of the Act (Notification: overseas investment exchanges and overseas clearing houses) a statement in compliance with section 295(2)(a) of the Act that an event has occurred in the period covered by that report which is likely to affect the FCA’s assessment of whether it is satisfied as to the requirements set out in section 292(3) (Overseas investment exchanges and overseas clearing houses), it must include particulars of that event.

An ROIE must include in its report submitted in compliance with section 295(1) of the Act:

1. particulars of any changes to:
   a. its memorandum and articles of association or any similar or analogous documents;
   b. its regulatory provisions;
   c. its chairman or president, or chief executive (or equivalent);

2. particulars of any disciplinary action (or any similar or analogous action) taken against it by any supervisory authority in its home territory, whether or not that action has been made public in that territory; and
(3) a copy of its annual report and accounts;
where those events occurred, or the period covered by that annual report and accounts ended, in the period covered by that report.

First report
An ROIE must include in the first report submitted under section 295(1) of the Act after the recognition order in relation to that ROIE is made:

(1) particulars of any events of the kind described in section 295(2) of the Act which occurred;
(2) particulars of any change specified in REC 6.7.4 R (1) or disciplinary action specified in REC 6.7.4 R (2) which occurred; and
(3) any annual report and accounts which covered a period ending;

after the application for recognition was submitted to the FCA but which were not included in the application or in any supplementary information submitted to the FCA before the recognition order was made.

Guidance on the period covered by an ROIE’s report submitted in compliance with section 295(1) of the Act is given in REC 6.6.3 G.

Changes of address
Where an ROIE proposes to change:

(1) its address in the United Kingdom for the service of notices or other documents required or authorised to be served on it under the Act; or
(2) the address of its head office;

it must give notice to the FCA and inform it of the new address at least 14 days before the change is effected.

Revocation or modification of home territory licence, permission or authorisation
Where an ROIE has notice that any licence, permission or authorisation which it requires to conduct any regulated activity in its home territory has been or is about to be:

(1) revoked; or
(2) modified in any way which would materially restrict the ROIE in performing any regulated activity in its home territory or in the United Kingdom;
it must immediately notify the FCA of that fact and must give the FCA the information specified for the purposes of this rule in § REC 6.7.9 R, as soon as that information is known to it.

The following information is specified for the purposes of § REC 6.7.8 R:

(1) particulars of the licence, permission or authorisation which has been or is to be revoked or modified, including particulars of the ROIE’s regulated activities to which it relates;

(2) an explanation of how the revocation or modification restricts or will restrict the ROIE in carrying on any regulated activity in its home territory or in the United Kingdom;

(3) the date on which the revocation or modification took, or will take, effect and, if it is a temporary measure, any date on which, or any conditions that must be met before which, it will cease to have effect; and

(4) any reasons given for the revocation or modification.

Language of notice

Any notice to be given or information to be supplied under these notification rules must be supplied in English, and any document to be provided must be accompanied, if not in English, by an accurate English translation.

An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.

Form and method of notification

The rules relating to the form and method of notification in § REC 3.2 also apply to ROIEs.

Waivers

ROIEs may apply to the FCA for a waiver of any of the notification rules. The procedure is the same as that for applications from UK recognised bodies. Guidance on the procedure is given in § REC 3.3.
6.8 Powers to supervise

The FCA has similar powers to supervise ROIEs to those it has to supervise UK RIEs. It may (in addition to any other powers it might exercise):

1. give directions to an ROIE under section 296 of the Act (Authority’s power to give directions) if it has failed, or is likely to fail, to satisfy the recognition requirements or if it has failed to comply with any other obligation imposed by or under the Act; or

2. revoke a recognition order under section 297 of the Act (Revoking recognition) if an ROIE is failing, or has failed, to comply with the recognition requirements or any other obligation in or under the Act; or

3. require an ROIE or a person connected with the ROIE, under section 165 of the Act, to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require; or

4. require any of the following persons, under section 166 of the Act, to provide the FCA with a report on any matter, or appoint a skilled person to provide the FCA with information or produce documents with respect to any matter:
   a. the ROIE; or
   b. any other member of the ROIE’s group; or
   c. a partnership of which the ROIE is a member; or
   d. a person who has at any time been a person falling within (a), (b) or (c).

The FCA will follow the approach in ■ REC 4.6, ■ REC 4.7, ■ REC 4.8, ■ REC 4.2F and ■ REC 4.2G if it is considering exercising these powers in relation to an ROIE.
Recognised Investment Exchanges

Chapter 6A

EEA market operators in the United Kingdom
6A.1 Exercise of passport rights by EEA market operator

Under section 312A of the Act, an EEA market operator may make arrangements in the United Kingdom to facilitate access to, or use of, a regulated market or multilateral trading facility operated by it if:

1. the operator has given its Home State regulator notice of its intention to make such arrangements; and
2. the Home State regulator has given the FCA notice of the operator’s intention.

In making these arrangements, the operator has exempt person status as respects any regulated activity, which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of that business.

An EEA market operator has exempt person status as respects any regulated activity which is carried on as a part of its business of operating a regulated market or multilateral trading facility if the operator made arrangements in the United Kingdom on or before 31 October 2007 to facilitate access to, or use of, that regulated market or multilateral trading facility.

In accordance with the RAP regulations, references in section 312A of the Act to specified regulated market and market are to be read as including reference to a specified auction platform and an auction platform as applicable.
6A.2 Removal of passport rights from EEA market operator

Under section 312B of the Act, the FCA may prohibit an EEA market operator from making or, as the case may be, continuing arrangements in the United Kingdom, to facilitate access to, or use of, a regulated market, or multilateral trading facility, operated by the operator if:

(1) the FCA has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and

(2) the FCA has first complied with sections 312B(3) to (9) of the Act.

A requirement is relevant if it is imposed:

(1) by the operator’s Home State regulator in the implementation of MiFID or any EU legislation made under MiFID;

(2) by provision implementing MiFID, or any EU legislation made under it, in the operator’s Home State; or

(3) by any directly applicable EU regulation made under MiFID.

The procedure the FCA will follow if it is to exercise this prohibition power is set out in sections 313B(3) to (9) of the Act.

If the FCA exercises this prohibition power it must at the earliest opportunity notify the Commission and ESMA of the action taken in relation to the operator.

The operator’s exempt person status ceases to apply if the FCA exercises this prohibition power.

The operator’s right to make arrangements in the United Kingdom, to facilitate access to, or use of, a regulated market, or multilateral trading facility, operated by the operator may be reinstated (together with its exempt person status) if the FCA is satisfied that the contravention which led the FCA to exercise its prohibition power has been remedied.

In accordance with the RAP regulations, references in section 312B of the Act to regulated market are to be read as including reference to an auction platform and references to MiFID are to be read as including reference to the auction regulation.
7.1 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1, 2, 3 and 4]

7.1.1 [Deleted]
7.1.2 [Deleted]
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7.2 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1, 2, 3 and 4]

7.2.1 [Deleted]
Section 7.3: [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1, 2, 3 and 4]

7.3 [deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1, 2, 3 and 4]

7.3.1 [Deleted]
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[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 4 Annex 6R]
[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES?3 Annex 3R]
Introduction

1. This schedule sets out the transitional provisions in REC.

2. The Recognition Requirements Regulations also contain transitional provisions applying to recognised bodies.

3. GEN also contains some technical transitional provisions that apply throughout the Handbook.
Recognised Investment Exchanges

Schedule 1
Record keeping requirements

Sch 1.1 G

There are no record keeping requirements as such in REC.

UK recognised bodies have obligations under the Recognition Requirements Regulations to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their facilities. See REC 2.9 for guidance (in the case of RAPs, see REC 2.9 as applied by REC 2A.3.2 G).

RAPs also have separate record keeping obligations under the auction regulation.
### Recognised Investment Exchanges

#### Schedule 2

**Notification requirements**

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**Sch 2.1 G**

**FCA**

The following table summarises the notification requirements applicable to all recognised bodies. The notification rules are set out in detail in Notification rules for UK recognised bodies and REC 6.7 and, to avoid unnecessary repetition, are not set out in detail here. The notification rules for RAPs differ in some respects from the notification rules for UK RIEs (for example, due to requirements contained in the auction regulation).

For completeness, summary details of the main notification requirements in the Act itself and the Companies Act 1989 are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the FCA under its powers nor that the following summary supersedes or alters the meaning of these provisions.

*Guidance* on the statutory notification requirements for ROIEs is given in REC 6.6.

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**Sch 2.2 G**

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**RAPs**

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<td>-------------------------------------</td>
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<td>-------------------------</td>
<td>---------------</td>
<td>--------------</td>
</tr>
<tr>
<td>REC 3.25</td>
<td>Significant breaches of rules and disorderly trading conditions</td>
<td>Significant breaches of rules and disorderly trading conditions</td>
<td>Significant breaches of rules and disorderly trading conditions</td>
<td>Immediately</td>
</tr>
<tr>
<td>REC 3.26</td>
<td>Proposal to make regulatory provision</td>
<td>Details of proposal</td>
<td>Proposal to make regulatory provision</td>
<td>Without delay</td>
</tr>
<tr>
<td><strong>ROIEs</strong></td>
<td><strong>The Act s295</strong></td>
<td><strong>Report to FCA</strong></td>
<td>Statement as to whether events have occurred which would affect the FCA’s assessment of whether the recognition requirements are met</td>
<td>Not applicable</td>
</tr>
</tbody>
</table>

**Notification rules for ROIEs (see REC 6.7)**

<table>
<thead>
<tr>
<th>Reference to legislation or Handbook</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>REC 6.7.3 R</td>
<td>Events which might affect the FCA’s assessment of whether the recognition requirements are met</td>
<td>Particulars of event</td>
<td>Not applicable</td>
<td>Include in report under s295</td>
</tr>
<tr>
<td>REC 6.7.4 R</td>
<td>Inclusion of certain matters in report</td>
<td>See REC 6.7.4 R</td>
<td>Not applicable</td>
<td>Include in report under s295</td>
</tr>
<tr>
<td>REC 6.7.5 R</td>
<td>First report</td>
<td>See REC 6.7.5 R</td>
<td>Not applicable</td>
<td>Include in report under s295</td>
</tr>
<tr>
<td>REC 6.7.7 R</td>
<td>Changes of address</td>
<td>Details of new addresses</td>
<td>Decision to change address</td>
<td>14 days in advance of change of address</td>
</tr>
<tr>
<td>REC 6.7.8 R and REC 6.7.9 R</td>
<td>Revocation or modification of home territory licence etc</td>
<td>Details of revocation or modification</td>
<td>Awareness of revocation or modification</td>
<td>Immediately</td>
</tr>
</tbody>
</table>
Recognised Investment Exchanges

Schedule 3
[Deleted]
Recognised Investment Exchanges

Schedule 4
[Deleted]
There are no rights of action under section 150 of the Act in respect of any contravention by a recognised body of any rule made under the Act.
Recognised Investment Exchanges

Schedule 6
Rules that can be waived

Sch 6.1 G

The notification rules in REC 3 and REC 6 can be waived by the FCA under section 294 of the Act (Modification or waiver of rules). (The statutory notification requirements, also summarised in Schedule 2 to REC, cannot be waived by the FCA.)